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C A S E S
SELECTED FROM THOSE
HEARD AND DETERMINED IN THE
VICE-ADMIRALTY COURT
AT
QUEBEC.

INVOLVING
Questions of Maritime Law
OF FREQUENT OCCURRENCE IN THE TRADE AND NAVIGATION
OF THE RIVER AND GULF OF ST. LAWRENCE.

WITH
AN APPENDIX
• CONTAINING MATTER FOR REFERENCE PARTICULARLY UPON
THE SUBJECT OF MARITIME JURISDICTION EXERCISED
BY THE VICE-ADMIRALTY COURTS.

63182

EDITED BY
GEORGE OKILL STUART, ESQ., Q.C.

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PREFACE.

SINCE the publication in 1858, of cases determined in the Court of Vice-Admiralty at Quebec, its jurisdiction, which had been extended by the statute 2 Will. IV. c. 51, was further enlarged by the Imperial Act, 26 Vict. c. 24. In the interval, between the year above-mentioned, and the present, these decisions, selected from a larger number, were rendered and are published as a Second Series.

The duties of Judge of the Vice-Admiralty Court at Quebec were discharged by the late Mr. HENRY BLACK from the year 1836 until his death in 1873. His decisions to be found in this, as well as those composing a previous volume, are marked with the precision and accuracy, and are conspicuous for the sound judgment and legal learning which characterised the opinions of this eminent and distinguished advocate, and which, universally, carried conviction to the public and professional mind. The merit of his decisions in the Vice-Admiralty Court at Quebec may be inferred from the fact that, during the period of thirty-six years, his tenure of office, not one was either reversed or even modified in appeal.

An Admiralty jurisdiction in the Dominion of Canada concerns, very materially, the trade and

navigation, not only of the river and Gulf of St. Lawrence, but also that of the Great Western Lakes and the links connecting them with the tide waters. As laws are requisite to protect, improve, and extend this trade and navigation, so is an adequate and efficient maritime jurisdiction required to enforce them.

Under the Crown of France there appears to have been a Court of Admiralty established at Quebec with powers more extensive than ever claimed under the Crown of England. This jurisdiction was superseded, as well by the cession of Canada as by the express introduction of the Admiralty jurisdiction of England, by the commission to Sir JAMES MURRAY, dated the 19th March, 1764, since continued to successive Governors. The commission to the Judge at Quebec originally included Upper and Lower Canada, as forming the old Province of Quebec; but, at their severance, and upon their reunion, it was limited to the present Province of Quebec.

An opinion was entertained by eminent lawyers in the United States, that a maritime jurisdiction over the Western Lakes was inherent to the Courts of Admiralty of that country. Much learning and legal information upon this subject will be found in an opinion of the Supreme Court of Michigan appended to this volume. But all doubts in that country upon the subject were removed by an Act of Congress passed on the 26th of February, 1845,

by which the jurisdiction of the Admiralty Courts in the United States over them, was placed on the same footing as their jurisdiction over the high seas and tide waters. The Lakes are, in truth, inland seas, Canada borders on one side and a foreign country on the other. Upon them there is a most extensive trade as well between the two countries as between places in each, and they are now navigated by vessels to and from Europe. In this trade there are employed sailing and steam vessels, foreign and British, of very large size, and under circumstances of navigation differing, in no respect, as to its hazards and incidents, from the commerce of the ocean. The jealousy which once existed between the Admiralty Courts and those of common law has long ceased, insomuch, that by the Imperial Act, 3 & 4 Vict. c. 65, s. 6, the jurisdiction of the Admiralty in England has been extended to cases of maritime services, contracts, and torts in navigable waters, though arising within the body of a county and within the jurisdiction of the Courts of Common Law. The principal advantage of the Admiralty jurisdiction consists in the Courts having the power and the machinery of proceeding *in rem*. The Courts of the United States, on the south side the Lakes, possess the advantage of this remedy, while those of Canada, on the north, do not; so that a British ship, doing damage to an American vessel, may be attached in an American port, while an American ship, causing damage to a British vessel, is not subject to a similar process in a Dominion Court. Under these circumstances

the restoring of an Admiralty jurisdiction in Canada over the Western Lakes, if not now, soon will be a matter of necessity.

By the Imperial Statutes 24 Vict. c. 10, of 1861, and the 26 Vict. c. 24, passed in 1863, the jurisdiction of the High Court of Admiralty of England and that of the Vice-Admiralty Courts were much enlarged. The former applies to the High Court of Admiralty of England and the latter to the Vice-Admiralty Courts. Upon a comparison of these statutes, both in this volume; it will be found that where some necessary and essential powers are vested in the High Court of Admiralty they have been withheld from the Courts of Vice-Admiralty without perhaps adequate cause. An opinion upon this subject, expressed by the Chief Justice of Nova Scotia sitting as Judge of the Court of Vice-Admiralty at Halifax, which is entitled to the greater weight as that of a Judge discharging duties in the Common Law Courts as well as in the Vice-Admiralty Court, where his position enables him the better to see the proper jurisdiction for each, is to be found in the Appendix to these Reports. This, and a further expression of opinion, in the cases of the "City of Petersburg" and the "Three Sisters," as to the necessity of new Rules for the Courts of Vice-Admiralty, will be read with interest as coming from one, who not only discharges the duties of two high judicial offices, but has always held a high and prominent position as well at the Bar as when in the Legislature and

Executive Government of Nova Scotia. Appendix,
p. 348 *et seq.*, and 374.

These Reports, with an Appendix containing matter for reference, particularly upon the subject of maritime jurisdiction exercised by the Vice-Admiralty Courts, in a smaller compass than is perhaps to be found elsewhere, it is hoped will be useful to the public and the profession.

LONDON, 25th January, 1875.

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CASES
IN THE
VICE-ADMIRALTY COURT
FOR
LOWER CANADA.

21st June, 1859.

IN THE MATTER OF CHARLES DROLET.

Registrar's Fees.

As to how far the Court will interfere, on a complaint made by the Registrar against proctors, for non-payment of his fees which they have received from their clients, and have not paid over to him.

JUDGMENT.—*Hon. Henry Black.*

This is a case of some importance to the officers and practitioners of the Court, inasmuch as it is founded on a complaint made by the registrar against two of the proctors for non-payment of his fees, which he alleges by his petition that they have received from their clients and have not paid over to him. This charge is not substantiated by affidavit as any charge implicating the character of a practitioner ought invariably to be; and on this ground alone it would be the duty of the Court to dismiss the application. But it is defective also in another respect; for, instead of directly alleging that his fees have been received by the proctors, the registrar merely tates "that he hath every reason to believe and does

B

verily believe" that they have done so. An indirect allegation of this kind is manifestly irregular—in every charge against the professional conduct or character of an officer of the Court, the facts ought to be alleged in the most direct and positive terms.

The Court disclaims all jurisdiction in the matter of fees. The registrar may at his option require them when the service is performed, or he may give credit, and then his recourse, if they are not paid, is in the ordinary courts of the country (a). But the non-paying over of fees which have been charged by a proctor against his client as being due to the registrar, and which have been actually received by him for the registrar, is a breach of discipline tending to lower the character of the Court, which has always cognizance in a summary manner of the conduct of its officers (b); and without pronouncing any opinion as to statements made in argument that the registrar had already adopted another remedy, the Court, in dismissing the present application, cannot but express an earnest wish that there may be no occasion for the exercise of its authority in this or any similar case. No such case has come before it since I have had the honour of presiding over it (now some twenty-three years), and in this instance I have reason to think that the difference between the parties has arisen rather from a personal misunderstanding than from intention to commit any wrong (c).

Drolet in person.

Andrews for Holt and Irvine.

(a) Pollard v. Gerard, 1 L. 3 Phill. 311; Peddle v. Toller, Raym. 703; Ballard v. Gerard, 3 Hagg. 389; Sir J. Nicholl. 1 Salk. 333.

(b) Peddle v. Evans, 3 Hagg. (Eccl.) 687-9; In the Goods of Lady Halton Finch, Ib. 235, 287; Leigh's case, Gib. 995, 3 Mod. 332; Prentice v. Prentice,

(c) Proctors and advocates are officers of the law, held to the strictest integrity, and the best faith and honour to their clients and the Court. They are accountable to the Court for

their professional conduct, and are subject to be deprived of their privileges and office, and otherwise punished, by attachment, fine, or imprisonment by the Court, for violation of professional duty, or for such moral delinquency as would bring into disrepute the administration of justice. 1 Hag. 223; 1 W. Rob. 335, 337; 2 Hag. Ecc. 195; 3 Hag. Ecc. 687; Ibid. 255; 3 Phill. 311; Bett's Prac. 11, 13, 14; Benedict's American Admiralty Jurisdiction and Practice, § 336.

Friday, 1st July, 1859.

PALMYRA.—LOVITT.

The Palmyra sunk in the St. Lawrence, was raised and saved by the machinery on board of the Dirigo, and the great skill and experience of her master and crew. £1000 sterling awarded as salvage.

PALMYRA.

This was a cause of salvage, promoted by Russell D. Bartlett, owner and master of the steamer Dirigo, for services rendered under the circumstances noticed in the following judgment of the Court :—

JUDGMENT.—Hon. Henry Black.

The Palmyra, a vessel of five hundred and eighty-six tons, having on board a cargo of about seven hundred and sixty tons of railway iron, sailed from the port of Newport in England for Quebec, on or about the 13th June, 1858, and reached the lower part of the river St. Lawrence without accident; but, on the 31st of July, she ran ashore on Red Island Reef. She was taken off the reef by the steamer Princess Royal, which was sent down from Quebec to her assistance, and was proceeding towards Quebec in tow of the steamer, when, on the 5th of August, at about one o'clock in the morning, she struck on White Island Reef; she there dropped her anchor, and remained with about three feet of water under her for an hour and a half, when she parted her chains and went over part of the Reef, in doing which she knocked out her stern-post and received other damage, and in consequence she sank in about two hours and a half afterwards.

White Island Reef is about ninety-six miles below Quebec, on the north side of the south channel of the river, which is there about eight miles and a half wide, being divided into two channels by the island, about five

PALMYRA.

miles from the south shore, and three miles from the north shore; the Reef extends about three miles from the island towards the north-east. The place where the Palmyra lay is a very dangerous one, and very much exposed to the prevailing winds and currents, and it is in evidence that had she floated, or had she been less heavy, she would have been forced over the reef and lost.

After she sank, the master left her, and proceeded to Quebec to obtain assistance, and to consult with Mr. Fry, the Lloyd's Agent, as to the best course to be pursued. It was agreed that one Glennie, a diver, should be employed to go down to the Palmyra to inspect her bottom, and to report to Mr. Fry by telegraph the state in which he should find her; but before he went down, Russell D. Bartlett, the promoter, having offered his services to save the vessel, an arrangement of some kind was made with him on the subject. The promoter was the owner and master of a steamer called the *Dirigo*, of one hundred and eighty tons burden, and one hundred and fifty horse power, provided with a very powerful steam pump, a diving apparatus, and machinery for raising vessels. She had on board besides the master, a crew consisting of a mate, two carpenters, three smiths, one diver, two firemen, one engineer, four or five sailors, one steward, and one pilot, in all eighteen. She was a new vessel, and having never been tried, the promoter was anxious to show her powers. The result of an unusually large mass of evidence is to satisfy me, that the understanding between the promoter and the master of the Palmyra was, in effect, that if the promoter saved the ship or her cargo, he should be well remunerated, but that if he failed in his attempt, he should have no remuneration whatever. There appears to have been no agreement for any specific sum, and indeed, it was impossible to put any value upon the work, before knowing the difficulties to be encountered. It was certain that he was to get nothing if he did not

PALMYRA.

save the vessel, and the risk he thus ran is undoubtedly an element to be taken into account in estimating the remuneration to which he was to be entitled if he succeeded.

It is proved that on the 6th of August, the promoter, in the *Dirigo*, left Quebec for White Island Reef, with the crew already mentioned, taking down Glennie, the diver, as far as the Pillars, and the master of the *Palmyra*. It is also proved to my satisfaction that the promoter, with great skill, ingenuity and perseverance, at great risk and expense,—extending even to obtaining from Quebec new castings and machinery for his steam pump, and bringing down a steamer from Quebec on his own responsibility, when the master of the *Palmyra* refused to do so, alleging that the case was hopeless,—did raise and save the *Palmyra* and her cargo, and that he brought her to a safe place at the Brandy Pots. That this was effected by the very ingenious, novel and excellent machinery on board the *Dirigo*, and the great skill and experience of her master and crew, most of whom were picked men and excellent mechanics; and that all this was done when the master of the *Palmyra* was ready to abandon the vessel as utterly lost, and when even her cargo could only have been partially saved by diving, at a cost of from forty to seventy-five per cent., and this, only provided the weather continued moderate for a sufficient length of time. The fact that the master stripped the vessel of her rigging and sent it to Quebec, places in a very strong light his opinion of her desperate position; and Mr. Menzies, Lloyd's Surveyor for the river St. Lawrence, says, in his evidence in the case, that he considers the salvage of the vessel from so very dangerous a place as White Island Reef a very great feat, which could only be achieved by powerful machinery and men of experience. To the same effect is the evidence of

Gourdeau, the Inspector of Pilots, who saw the Palmyra as well on White Island Reef as at the Brandy Pots.

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The Dirigo and the crew were employed in these services about thirty days. It is proved that the promoter declared himself ready and able to bring the Palmyra to Quebec, remaining alongside of her with the Dirigo and her pumping apparatus, and working it in the same manner as he had done in raising her and bringing her from White Island Reef to the Brandy Pots; and though there is some difference of opinion on this point among the witnesses, there seems to me no reason to doubt that his efforts would have been as successful as they had previously been.

After the Palmyra was put in a safe place at the Brandy Pots, and after the master had expressed his satisfaction with the success of the promoter's labours, Mr. Fry and the master sent down from Quebec to the Brandy Pots, Mr. Dinning, a gentleman extensively engaged in ship building, and although it appears that he expressed doubts as to the feasibility of the promoter's plan, he so far acceded to it, that he went with the master and the promoter on board the Dirigo to River du Loup, and telegraphed to Quebec for two steamers to tow the Palmyra, while the Dirigo should keep her afloat with the steam pump. It was not until after the arrival of these steamers at the Brandy Pots that the master became alarmed lest the speed with which the vessel would be drawn through the water should open the leaks in her; and that, with the advice of Mr. Dinning, he declined to allow the promoter to take the Palmyra to Quebec, and declared his intention to engage Mr. Dinning to platform her, and notified the promoter of his decision, and that he no longer required the services of the promoter or his crew. The Palmyra was subsequently platformed, brought to Quebec, and repaired.

Under all the circumstances, I am bound to declare that

PALMYRA.

the services rendered by the promoter were exceedingly meritorious and useful, that in fact he saved the vessel and cargo, and that he ought to be fairly remunerated. The appraised value of the vessel is £1055 17s. 2d., and that of the cargo is £5376 6s. 2d. currency. The actual disbursements of the promoter during the time he was employed appear to have rather exceeded £500, without including the value of his own services and time, and to this sum I consider him entitled for them. The value of his vessel, machinery, and apparatus, is stated at forty-five thousand dollars; and that the risk of the total loss of these must have been great, is shewn by the fact that he could obtain no insurance on them while engaged in saving wrecks. The actual wear and tear must have been considerable. For the services of the promoter, the use of his vessel and machinery, risk, interest, and wear and tear, I think he is fairly entitled to a further sum of not less than £700 currency, and I accordingly award to the promoter for salvage services to the Palmyra the sum of one thousand pounds sterling to be apportioned upon the ship and cargo according to their respective appraised value, with costs.

Jones and Hearn, for Russell D. Bartlett.

Holt and Irvine, for owners of ship.

Vannovous, for owners of cargo.

Saturday, 12th November, 1859.

MARATHON.—HORST.

Where voyage in Shipping Articles is described as one to North and South America: *Held*, that such description is too indefinite under the Merchant Shipping Act of 1854.

JUDGMENT.—Hon. Henry Black.

This case comes before the Court upon a reference made, under the authority of the Merchant Shipping Act, by the magistrate before whom the original suit for wages was brought. In order to prevent desertion and squandering their wages abroad, and leaving their families in distress, the Act provides that no seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any Court abroad for wages, unless he is discharged with such sanction as is required by the Act, and with the written consent of the master, or proves such ill usage on the part of the master, or by his authority, as to warrant reasonable apprehension of danger to the life of such seaman, if he were to remain on board,—and the question which arose before the magistrate, and upon which he entertained doubts, is whether the complainant was or was not legally engaged under articles containing the particulars as terms thereof, required by the Act.

The Act requires that articles shall, among other particulars, state the nature and, as far as practicable, the duration of the intended voyage: in default the master is to incur a penalty for each seaman carried to sea; and therefore, the articles being made unlawful by statute, must necessarily be void. In this case the intended voyage is described in the following terms:—"London to Cardiff, thence to Marseilles, Toulon, and any port or ports

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in the Mediterranean, Black Sea, and Sea of Azov, North and South America, West Indies, and back to a final port of discharge in the United Kingdom, or continent of Europe between the Elbe and Brest,—voyage not to exceed two years.” Now, the question is whether the “nature of the voyage,” after leaving the Mediterranean, is sufficiently described. I am of opinion that it is not, and that the words “North and South America,” are too large and indefinite to convey to the seaman any adequate idea of the obligation he was taking upon him. Dr. Lushington in the case of the *Westmoreland* (a) declared the words “Continent of Europe,” to be too indefinite to form a description of the “nature of the voyage,” in the case of that ship; and the words “North and South America,” are manifestly still more indefinite, including as they do, not only the whole continent of America, from the extreme north-east of Labrador, round by Cape Horn, to the extreme north-west of Russian America, with every possible variety of climate, but also every island which is geographically within that vast division of the world known as America. Dr. Lushington says, “In interpreting the Act, the words ‘nature of the voyage,’ must have such a rational construction as to answer the main and leading purpose for which they were framed, namely, to give the mariner a fair intimation of the nature of the service in which he was about to engage himself when he signed the ship’s articles.” In this opinion I perfectly concur, and inasmuch as the terms “North and South America,” do not seem to me to give any such intimation, and as there is nothing to shew that any such comprehensive ambiguity was required for the purposes of trade, I am of opinion that the statute has not been complied with as regards the description of the nature of the voyage, and that the complainant is not here under a legal engagement under the Act, and therefore was at liberty to sue for wages before

(a) 1 W. Rob. p. 216.

the magistrate. In this view of the case it becomes unnecessary to consider the question, whether a voyage which may terminate on "the continent of Europe between the river Elbe and Brest," is a voyage which is to terminate in the United Kingdom, though I am inclined to think that it is not.

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It is much to be regretted that owners and masters of vessels are not more careful in the description of the voyage for which the ship's articles are drawn up; there can be no fair advantage in making the description of the voyage ambiguous, or so large as not to give the seaman that knowledge of the service he undertakes to perform, to which the law considers him entitled,—a voyage to "North and South America," is in fact little more definite than a voyage to any part of the world (*b*).

Secretan and Dunbar, for the Promoter.

O'Farrell, for the Owners.

NOTE.—When in the shipping articles of an English vessel, the voyage was described to be from the port of Liverpool to Savannah, and any other port or ports in the United States of America, and any port or ports in British North America, and any port or ports in the West India Islands, at the discretion of the master, or consignees, as freight or cargo may offer, and back to her final port of discharge, of Great Britain and Ireland; term of time on the voyage not to exceed twelve months: *Held*, that the voyage intended was confined to the ports on the eastern shore of the continent, and that the articles did not authorise a voyage to San Francisco, on the north-west coast.

The Ada, Davies' Rep. D. C. of U.S. for the District of Maine, p. 407.

"Within the words of the description of this voyage, the

(*b*) *The Varuna*, L. Canada, Hagg. 347; *The George Home*, V. A. R. 357; *The Minerva*, 1 Hagg. 376.

MARATHON.

master might carry his crew to any port in British North America. But the British possessions extend across the whole breadth of the continent, and without going beyond the literal sense of the language of the contract, he might carry them on a voyage to the extreme north-west coast. Can it be imagined that the owners, when they prepared this shipping paper to read to the crew, supposed, unless some verbal explanations were given at the time, that the men would understand that they were binding themselves to go a voyage to the south of the Colombia river, or to Vancouver's Island, if the master chose to carry them there? The description would naturally suggest to them a voyage to those ports which were familiar to the commerce of their country, and which were frequently and ordinarily visited for the purposes of trade; and, in the popular and usual sense, they would suggest nothing more. That is, it would be taken to be a voyage in which the vessel might visit any of the American or British ports on the eastern shore of the continent.

"This is the interpretation that I should have given to the contract, if the description of the voyage had terminated with merely naming the ports which might be visited, in the order in which they stand in the shipping articles. They would, without some further explanations were given, suggest to the seamen a voyage embracing the ports on the eastern shore of the continent and nothing more. It was justly urged, by the counsel for the libellants, that if there is a fair and reasonable doubt as to the true meaning of the articles, the seamen are on every principle entitled to claim a construction favourable to themselves. It is the owners who give the description of the voyage, and on general principles applying to all contracts, if the language is ambiguous or uncertain in its meaning, the construction shall be against the party who uses it, because he is bound to express himself clearly; and this principle applies with all its force to contracts between owners, who are always

men conversant in business, and shrewd and watchful in looking to their own interests, and seamen, who are proverbially careless, improvident, and ignorant. The disparity in the condition of the parties imposes on the Court a duty to take care that the improvidence of seamen is not entrapped by the superior watchfulness and sagacity of owners into engagements that they did not intend to make."

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Judge WARE, in *The Ada*, Davies' Rep., p. 412.

25th November, 1859.

MARTHA SOPHIA—BOUCHOT.

Trinity House Regulations, Lights, Collision.

The non-compliance by a vessel with the Trinity House Regulations, as to the exhibition of lights, will not prevent the owners from recovering damages for injuries received from another vessel by collision, if the officers of the latter vessel saw the former and knew her position.

MARTHA
SOPHIA.

This was a cause promoted against the brigantine Martha Sophia, by the owner of the schooner Diligence, for damage sustained by a collision in the harbour of Quebec. The facts of the case are fully adverted to in the following judgment :—

JUDGMENT.—*Hon. Henry Black.*

On the 4th of October, 1858, the schooner Diligence, of about 80 tons burden, owned by John Maxham of Quebec, the promoter in this cause, having discharged a cargo of salt, at Point Levi, proceeded to the mouth of the St. Charles, in the harbour of Quebec, and there anchored. In the evening of the same day she was still at anchor, and, after dark, the master, Pierre Mogé, caused a bright light to be placed in the rigging of her foremast. This is distinctly proved by the evidence of the master, and of the two seamen who formed the crew ;—they describe the light and its position clearly, and their evidence is consistent and positive ; they say it was placed about ten or twelve feet above the deck. While the Diligence was in this position, and while she exhibited this light, at about half-past eight o'clock, the brigantine Martha Sophia, in tow of the steamer St. Louis, came down from Montreal, with a full cargo, with which she was to proceed to

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Miramichi, in New Brunswick. Both the brigantine and the steamer were well lighted. After passing down the river below the India Wharf, and as Laflamme, one of the witnesses for the defence says, within 80 feet of the Diligence, which both he and the mate of the brigantine (Regis Mercier), another of the defendant's witnesses, say, they saw,—the tide was running full ebb, and after passing the Diligence as I have stated, the steamer and brigantine turned up the river against the tide, and when at a distance above her, which Mercier, mate of the brigantine, now thinks to have been about five arpents, but which he says he then thought appeared to him to be about eight or ten arpents, from the darkness of the night, and from his not seeing the light on board the Diligence—he ordered the brigantine's anchor to be let go, and cast off the tow rope by which she had been towed by the steamer. The Martha Sophia, drifting down with the ebb tide, and having no sail set, or any other means of controlling her movements, dragged her anchor, and, before it held, came down upon the Diligence, and ran foul of her, doing the damage for which this action is brought.

The claim is resisted mainly on the ground that the Diligence ought, under the Trinity House Regulations of 1858, then in force, to have had two distinct lights, one in the larboard fore-rigging, and another on the mizen peak, or in the mizen or main starboard rigging, each of which lights ought to have been placed 20 feet above the deck.

It is certain that she had not the two lights, but it seems also certain that she had one placed in the larboard fore-rigging, as required by the regulation, though somewhat too low. Upon the subject of the one light there is some conflicting evidence, many of the witnesses for the defence saying there was no light at all exhibited by the Diligence; but this evidence only goes to prove that they did not see it, whereas, on the other hand, it is positively sworn by all the men on board the Diligence that a bright

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light was exhibited in the fore-rigging. They swear that they placed it there themselves ; and evidence that it was not seen by other parties, not on board the vessel, is clearly not entitled to the same weight as the positive testimony of the men who lighted and placed it. A ship's light is not an object so bright and conspicuous that it must necessarily be seen by persons whose eyes are not directed to it ; and the numerous lights on board the steamer and the brigantine may have tended to prevent the people on board them from observing the single light on board the Diligence. The evidence, in my opinion, leaves no room to doubt that there was a light exhibited on board the Diligence, in such a position that it must have been seen by the people of the steamer, and of the brigantine if a proper look-out had been kept by them. On the other hand, it is certain that the Diligence did not exhibit two lights, as the Trinity House Regulations required ; nor was the one light quite so high above the deck as prescribed. But it is admitted that the Diligence was seen by those on board the steamer and the brigantine. Laflamme, a fireman of the steamer, Mercier, the mate of the brigantine, and Beauchemin, the pilot of the steamer, —all witnesses for the defence,—distinctly say they saw her and passed at a short distance from her, in coming up the river against the tide, after passing below her to make the turn. The witnesses for the defence differ as to the distance at which they were from the Diligence when they cast off the brigantine. Mercier says, he thinks now they were about five arpents from her, while the pilot, Beauchemin, estimates the distance at about an arpent and a half, the Diligence being to the north and below the brigantine. Mercier says he thought then that they were further from her, but Beauchemin does not so qualify his estimate of the distance, or say that he was deceived as to the distance by want of a light on board the Diligence.

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When a vessel at anchor is run down by another vessel, the vessel under weigh is bound to show by clear and indisputable evidence that the accident did not arise from any fault or negligence on her part, for this obvious reason that the vessel at anchor has no means of shifting her position or avoiding collision. In this case it does appear that there was fault or negligence on the part of the brigantine, the master of which expressly desired the steamer to cast him off at the time mentioned by the witnesses, and within a distance from the Diligence which proved insufficient to enable him to bring up his vessel without coming into collision with the Diligence. He miscalculated either his distance from that vessel, or the strength of the tide, or the time it would take before his anchor would hold him ; and the greatest distance stated certainly appears too short, considering that the tide was running full ebb directly towards the Diligence. But this miscalculation cannot be in any way imputed to any fault or negligence on the part of the people of the Diligence, or to the fact of her having but one light instead of two as required by the Trinity House Regulations then in force, or to the one light being a little lower than prescribed. If the people on board the steamer and brigantine had not seen the Diligence, then the non-compliance with the regulation might have been a defence to the action ; but having seen her, they were bound to take every precaution against a collision with her, and this whether she was properly or improperly anchored or lighted. Neither by the marine nor by the common law is a vessel or a carriage justified in not taking proper precautions against a collision with another, by the fact that such other is not in its proper position or side of the road or is in any way contravening any rule of the sea or of the road. It does not appear that the Martha Sophia took proper precautions for avoiding a collision with the Diligence after having seen her ; the night was clear, and

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there was no wind or other circumstance which could occasion any difficulty, and the collision seems to me to have arisen solely from the Martha Sophia having cast off from the steamer sooner than she ought in common prudence to have done, and not having allowed sufficient time for her anchor to hold, and to keep her clear of the Diligence. Vessels ought certainly to comply strictly with all the Trinity House Regulations, and the Diligence may have been liable to a penalty for not doing so, but the collision did not arise from her non-compliance with such regulations, nor did such non-compliance justify the neglect or error in judgment on the part of the Martha Sophia by which the accident was occasioned.

Kerr and Lemoine, for the Diligence.

Plamondon and Dechene, for the Martha Sophia.

Tuesday, 20th December, 1859.

MARGARET—CLARK.

Where collision occurs, without blame being imputable to either party, loss must be borne by party on whom it happens to alight.

The Court will not give costs where a collision has occurred from inevitable accident.

In a case of collision the *onus probandi* is, in the first instance, upon the party complaining of the injury.

Although the rule is to port the helm upon the approach of a vessel so soon as descried, still there must be time and opportunity for reflection, as a vessel may, at first sight, be going in a direction opposite to that supposed, and the consequence fatal.

This was a cause of damage by collision promoted by the owner of the barque Warburton against the barque Margaret, under the circumstances noticed in the following judgment :—

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THE COURT—*Hon. Henry Black.*

The Warburton, a vessel of 405 tons burthen, laden with deals, sailed from Quebec on the 18th of November, 1857, on her home voyage to London, and in the early morning of the 24th, the wind then being from south-eastward, was beating down the river between Gaspé and Anticosti, under two close-reefed topsails, and on the starboard tack. The Margaret, a vessel of 559 tons burthen, laden with wheat, flour, and deals, sailed from Quebec for Liverpool on the 17th of the same month of November, and in the early morning of the 24th was also beating down between Anticosti and Gaspé, under close-reefed topsails, fore-topmast stay sail and mizen stay sail, on the port tack, and going about five miles an hour. The rate at which the Warburton was going is differently stated, the man at the wheel saying it was from three to four knots, the boat-

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swain five or six knots, while the master says she was going about one knot, and the mate that she might be said to be hove to, and was scarcely under command. About forty minutes past five, according to the witnesses on the part of the Warburton, and about five according to those on the part of the Margaret, the two vessels met each other on opposite tacks, and the collision took place, the Margaret striking the Warburton on the port side, and doing the damage complained of. The Warburton was so disabled that she was obliged to be run ashore on Anticosti, and wintered there. The Margaret was also so much injured by the collision that she had to go into Sidney in Cape Breton to repair.

There is as usual some discrepancy between the evidence offered by the opposing parties, but the following facts appear to me to be clearly established :—The Warburton was on the starboard, and the Margaret on the port tack. The Margaret had a good light at her bowsprit end, which was seen from the Warburton. The Warburton, a short time before the collision, had taken in her bowsprit light, for the purpose of trimming it, and it was so taken in at the time when she first saw the Margaret's light; but on seeing the Margaret's light, the master of the Warburton ordered the binnacle light to be exhibited over her lee or port side about the main chains. The light of the Margaret was first seen about two points on the lee (or port) bow of the Warburton. The light which the master of the Warburton ordered to be exhibited when he saw the Margaret's light, was seen suddenly by the people of the Margaret on her lee bow. There is contradiction in the evidence as to the time which elapsed between the time when the vessels saw each other's lights, and that at which the collision took place, the people of the Warburton saying they saw the Margaret's light ten or fifteen minutes previous to the collision, and that they exhibited their binnacle light over the side immediately after first seeing the Mar-

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garet's light. The Margaret's people on the other hand say that they saw the Warburton suddenly, two, three, four and five minutes before the collision. They all say that as soon as it was seen the master ordered the Margaret's helm to be put hard a-port, the mainyard to be squared, and the mizzen-stay-sail to be hauled down ; that these orders were obeyed, the helm being hard a-port, and the men being in the act of squaring the mainyard and hauling down the stay-sail when the collision took place. On the other hand, the master of the Warburton, on seeing the Margaret's light, ordered the man at the Warburton's helm to keep his luff. Both vessels therefore appear to have done exactly what they ought to have done after they saw each other ; for the Warburton, being on the starboard tack, was entitled by the rule of navigation to hold on her course, which she did ; and the Margaret was bound to give way, which she endeavoured to do, the orders given by her master being those best calculated to make her pay off. The only question is, whether these orders were given and obeyed as quickly as possible after the Warburton's light was seen, and I see no reason to doubt they were. The witnesses on board the Margaret swear positively that they were given and obeyed immediately the Warburton's light was seen ; and their direct evidence on this point, in my opinion, overbalances that of the people of the Warburton, which can only be founded on their estimate of the time which elapsed between the time when they showed their binnacle light over the side of the vessel, and the time of the collision. The impossibility of forming any correct estimate of time in cases of this kind, amidst the hurry, excitement and confusion which necessarily prevail, is too well known to need comment.

Whether the collision took place at five o'clock as stated by the Margaret's people, or at forty minutes after five as stated by those of the Warburton, it certainly took place

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before daylight. Both vessels appear to have done their best to comply with the regulations of the Admiralty then in force, which merely required that a sailing vessel should, between sunset and sunrise, on approaching any other vessel, show a bright light in such a position as could be best seen by such other vessel, and in sufficient time to avoid collision. The new Admiralty Regulations, which require constant lights, were not then in force, and therefore, we cannot say that the Warburton contravened any rule of navigation in taking in the bowsprit light for the purpose of trimming it, though it does appear very probable that if there had been, throughout the whole time the vessels were approaching each other, a constant light at the bowsprit end, the accident might not have occurred. The new regulations are evidently much better calculated to prevent accidents by collision than those for which they are substituted; and the mercantile world may, I think, be congratulated upon the care and science of which the authorities of the Admiralty have given proof in their promulgation. As they were not in force, and the Warburton complied literally with the then existing regulation by showing a light on her quarter, as soon as possible after she saw the Margaret's light, she cannot be said to have been in fault; and I see no reason to regard the collision otherwise than as the result of inevitable accident. In such case the rule of law is, that the damage must be borne by the party on whom it happens to alight; the other not being responsible to him in any degree. Then, as to the costs incurred in the suit, the Court feels itself bound to follow the practice adopted by the High Court of Admiralty of England, which is, as stated by Dr. Lushington in the case of *The Itinerant* (a) not to

(a) 2 W. Rob. p. 244.

give costs on either side when a collision has occurred from inevitable accident.

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Pentland and Pentland, for the Warburton.

Holt and Irvine, for the Margaret.

NOTE.—On an appeal to Her Majesty in Her Privy Council this decision was affirmed on the 13th February, 1861, there being present *Lord KINGSDOWN*, *Lord CHELMSFORD*, *Dr. LUSHINGTON*, and *Sir EDWARD RYAN*, when *Dr. LUSHINGTON* pronounced the following judgment :— Their Lordships do not think it necessary to trouble the Counsel on the other side to give an answer to the arguments which they have heard. Everything that could well have been said in support of the Appellant's case has been said, but it does not appear to satisfy their Lordships in any degree that the judgment of the Court below was erroneous. We do not deem it necessary to enter minutely into the evidence in the case, but it may be as well to state one or two points which have been useful in guiding their Lordships' judgment in affirming the decision of the Court below. It is manifestly clear that the owners of the Warburton, in order to prove their case, are bound to prove to the satisfaction of their Lordships that the Margaret was to blame. The *onus probandi* was upon them in the first instance, and that is greatly increased by the long discussion and evidence in the Court below, and the judgment there not being in their favour. Now one consideration is, what was the conduct of those on board the Warburton on this night — the captain and crew. Looking at the whole of the evidence we think it must have been an exceedingly stormy night, and in the morning there had been successive showers of snow, and at times it was foggy,—though there is a conflict of evidence as to the exact state of the atmosphere at the time the collision took place, but there is evidence that

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the wind was blowing very strong, and that it was a dark morning. Now, under these circumstances, the Warburton very properly carried a light at the bowsprit end. It may be very true that, under ordinary circumstances, there was no law to compel the Warburton to carry a light at the bowsprit end,—and it would have satisfied the law and have been sufficient as the law then was, if she had had a bright light ready to show to a vessel, but on such a night as this we conceive it was the duty of those on board the Warburton to take every possible precaution, and that when the bowsprit light became dim, and it was requisite and necessary for them to remove it for the purpose of trimming it, they ought to have put another in its place to give every notice they could to those vessels that were in that locality. There, we are of opinion that the Warburton had failed. Now, with respect to the Margaret, it has been strongly insisted, and perhaps truly, that if at the moment this other vessel was descried, as soon as notice was given that the vessel was seen two points on the lee bow, the helm had been put to port, it is possible the collision might have been avoided. But we are of opinion that it is not prudent, or consistent with propriety, that the moment you descry a vessel you are to port your helm. Time must be allowed and opportunity given,—though it ought to be done as quickly as possible,—to ascertain the direction of the vessel; because otherwise the consequence would be, if the vessel was going in the opposite direction to that in which she at first sight is supposed to be, and which cannot be ascertained at the moment when you see a single bright light—it is not as if you saw a coloured light—more especially on a dark night, the consequence, I say, would be certain destruction. Looking at the whole of the case, and considering that the *onus probandi* lies upon the Appellant, and that he has failed in discharging it, we must affirm the decision of the Court below with costs.

Tuesday, 31st January, 1860.

THE HAIDEE—KEMPTHORN.

The Admiralty has jurisdiction, in cases of possession, to reinstate owners of ships who have been wrongfully displaced from their possession.

When the Court has original cognizance of the principal matter, it has also cognizance of the incidents thereto.

When a limited authority is given to justices of the peace, they cannot extend their jurisdiction to objects not within it, by finding as a fact that which is not a fact; and their warrant, in such case, will be no protection to the officer who acts under it.

Under the 190th section of the Merchant Shipping Act, no seaman, engaged for a voyage or engagement to terminate in the United Kingdom, can sue in any court abroad for wages, unless he is discharged with such sanction as is required by the Act.

Under the 526th section of that Act, a ship cannot be seized under an order made against a person who, at the time, is neither owner nor entrusted with the possession or control of her.

A maritime lien is not indelible, but may be lost by delay to enforce it when the rights of other persons have intervened.

This was a suit brought by Thomas Hobbs, of Liverpool, Merchant, to obtain possession of the British registered ship *Haidee*, alleging that he was the owner, and that possession thereof was wrongfully withheld from him by Richard Kinsley. The facts connected with the detention of the vessel are fully stated in the following judgment this day rendered in the cause :—

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JUDGMENT.—*Hon. Henry Black.*

This is a case technically known as a "cause of possession," the object in which is to obtain the restoration to the alleged rightful owner of a vessel, of which he avers that he has been wrongfully dispossessed. The proceedings in this Court commenced on the 14th of September last, by the promoter, Thomas Hobbs, as the owner of the

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Haidee, whereof Edward Kempthorn was then master, of the burthen of 688 tons, suing out a warrant of arrest, upon an affidavit made by his agent, according to the practice of the Court, that he was such owner, and that she was wrongfully detained and withheld from him by one Richard Kinsley, and others acting under his authority. Upon the return of the warrant a decree of possession was made, ordering the vessel to be delivered to the promoter, on his giving security to answer such claims as Kinsley might legally have; security was given, and on the 19th of September, the vessel was delivered to him accordingly, and proceeded on her voyage home. The promoter having filed his libel in the cause, Kinsley, by his claim and answer, set up no adverse title to the vessel, but alleged that he had seized her under the authority of certain warrants of distress, therein recited, and that he did not otherwise detain or withhold possession of the vessel from the promoter.

The facts of the case as they are disclosed in the pleadings and evidence are as follows:—In the month of August, 1855, the Haidee, then owned by Arthur Ritchie of Quebec, and commanded by Robert Kellow as master, was lying at Plymouth in England, bound on a voyage from Plymouth to Quebec or any port or ports in North America, and back to any port or ports of discharge in the United Kingdom. James Elliott and seven others were engaged as part of the crew for the voyage, and signed the usual ship's articles or mariner's agreement. The Haidee sailed from Plymouth on or about the 17th of August, and arrived at Quebec on or about the 1st of October following. On the 15th of the same month of October, Robert Kellow was discharged by Mr. Ritchie the owner, and Michael Keane was appointed master in his stead, and his appointment duly entered upon the register of the vessel. On the 5th of November following Elliott and the seven other seamen before referred to, having wilfully disobeyed a

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lawful command of the new master, Michael Keane, were by him brought before John Maguire, Esquire, Inspector and Superintendent of Police, and a Justice of the Peace for the district of Quebec, and having admitted the agreement entered into at Plymouth, were convicted of the offence; and were severally sentenced to be imprisoned in the common gaol for a period of one week, and were committed accordingly. The ground upon which these men attempted to justify their disobedience was, that the master had been changed since they signed the agreement; but this defence Mr. Maguire correctly held to be invalid. On the 6th of November, Kellow instituted proceedings in this Court, for wages alleged to have accrued to him. On the 7th, the ship being ready for sea, and the services of Elliott and the seven seamen being required on board, Mr. Maguire, at the request of the master, issued a warrant, under the power given by the Merchant Shipping Act, for their discharge from gaol, and their conveyance on board the ship, for the purpose of proceeding on the voyage, and they were accordingly conveyed on board; but on the same day they went to the office of John O'Farrell, Esquire, Advocate, where René Gabriel Belleau, Esquire, a Justice of the Peace attended (as stated in his evidence), and swore each of them to a claim and complaint against Robert Kellow, as master of the Haidee, for wages alleged to be due to them respectively for services on board the ship from the 14th of August to the 7th of November, on a voyage from Plymouth to Quebec, and as if the services they had engaged to perform had terminated. Upon these complaints summonses to Kellow were taken out by Mr. O'Farrell, dated the 7th of November, returnable at noon on the 8th; these were served in the Court House, on Kellow, who was attending there, a quarter of an hour before noon, and the constable who served them states that they were delivered to him by Mr. O'Farrell, and that they were returned into Court

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immediately afterwards, that is to say, within a quarter of an hour, and the trials were had immediately before Mr. Belleau and Pierre Martial Bardy, Esquire, another Justice of the Peace, Mr. Maguire having then, according to what is proved to be his usual custom at that hour, gone away for a short time. The constable George Neilan, who made the service, states that Mr. Maguire generally hears and decides complaints of seamen for wages: and Mr. Maguire himself states that it is quite unusual to make any summons to the Police-office returnable at noon. Kellow appeared, but does not seem to have made any proper defence, or to have shewn that he had ceased to be master of the ship, or that the complainants were engaged for a voyage which had not terminated, and which by the articles of agreement was to terminate in Great Britain. Nor does it appear that the magistrates were made aware of or inquired into these points; and an order was made in each case by Messrs. Belleau and Bardy in favour of the complainants; the sums awarded for wages amounting to £60 7s. 7d., and the costs to £20, which sums Kellow was commanded immediately to pay. By the Merchant Shipping Act, under which the proceedings were had, if, after wages are lawfully due by the termination of the voyage, an order is made for the payment thereof, on a party who is then master or owner of the ship, and the amount is not paid by the time and in the manner prescribed in the order, the Justices who made the order may direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture, and apparel. Kellow was not master, nor had the voyage terminated, but Messrs. Belleau and Bardy on the same 8th of November (1855), issued under their hands and seals, eight warrants of distress, directing the sums mentioned in the orders and costs to be levied by distress and sale of the vessel. These warrants were, on the same day, handed by Mr. O'Farrell to George Neilan, a constable, who went to Cap Rouge to

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execute them, but found that the Haidee had been removed, whereupon he returned to Quebec and gave back the warrants to Mr. O'Farrell. On the next day (the 9th November), Mr. O'Farrell put the same warrants into the hands of Paul Thibaudeau, with instructions to execute them on board the Haidee, then lying at anchor in the harbour of Quebec, near the Island of Orleans. Thibaudeau, assisted by Godfroi Prendergast and by seventeen men, engaged by Mr. O'Farrell, who went with them, proceeded to the Haidee; the master was absent, and the pilot having refused to pay the sums mentioned in the warrants, Thibaudeau caused the anchor to be weighed, and the ship to be towed back to O'Brien's wharf in Diamond Harbour. When there, Richard Pope, Esquire, Advocate,—having, as he states, at the instance of Mr. Ritchie, the owner of the ship, obtained from Mr. Bardy, one of the Justices who issued the warrants, what he terms an order addressed to Mr. O'Farrell, to abstain from any further proceedings, upon receiving from Mr. Ritchie a guarantee that he would pay Mr. O'Farrell all claims, costs, and charges which the seamen might have against him or the vessel, in the event of the orders being confirmed on appeal or on *certiorari*,—presented the same to Mr. O'Farrell on board the vessel, with a guarantee signed by Mr. Ritchie to the required effect. Mr. O'Farrell accepted this guarantee, and gave up possession of the vessel, and ordered the bailiff and his men to leave her and go on shore, telling them he had been satisfied by Mr. Ritchie. The vessel then proceeded to sea.

In the year 1856, Thomas Hobbs (the promoter) purchased the Haidee, and has ever since been the sole owner and in possession of that vessel. And she has since been commanded by five different masters; and has made five different voyages to Quebec, arriving there respectively, on the 19th of May, 1856,—on the 29th of September, 1856,—on the 26th of May, 1857,—on the

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8th of September, 1857,—and on the 30th of August, in 1859.

On the 8th of September, 1859, Mr. O'Farrell put the eight warrants issued by Messrs. Belleau and Bardy, on the 8th of November, 1855, into the hands of Richard Kinsley, a bailiff and constable, and instructed him to seize the *Haidee*, unless the full amount mentioned in them were paid him on demand. Kinsley accordingly, accompanied by one Patrick Ford, went on board the ship, then lying at a wharf in the harbour of Quebec, and on the refusal of Kempthorn, the master, to pay the sums demanded, seized the ship with her tackle. Mr. O'Farrell immediately afterwards came on board, and brought fourteen men as keepers, seven of whom remained on board ten or eleven days, until the vessel was released by order of this Court, upon security being given to meet the claims under the warrants, if they were found valid; the amount then claimed being,—for wages £60 7s. 7d.,—for costs before the Justices £20,—and for costs of distress £125 4s.,—making in all £205 11s. 7d. currency, which sum Kinsley now claims.

Under these circumstances Mr. Hobbs, the present owner, applied for and obtained a writ of possession against Kinsley as a wrongdoer, and the vessel was delivered up to him, on his giving security as before mentioned (a).

Of the jurisdiction of the Court in causes of possession there is no doubt (b). From the most ancient times the Court of Admiralty had constantly entertained both petitory and possessory suits concerning the property and employment of ships; and although, after the Restoration, it was intimated by the Courts of Common Law that questions of disputed title were not properly cognisable in the Admiralty, and after that time the Court was very abste-

(a) *The Partridge*, 1 Hagg. Adm. Rep. 81.

(b) *The Mary and Dorothy*, L. C. Ad. R. p. 187.

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mious in the interposition of its authority in cases of mere disputed title, its jurisdiction over *causes of possession* was always retained; nor was any intimation ever given by the Courts of Common Law that the Admiralty should abandon its jurisdiction over causes of possession; and the practice of entertaining such causes has been constant and uninterrupted. The rules of the Court, established by an order of His late Majesty in Council, under the authority of the British Act of Parliament for regulating Admiralty proceedings, contain provisions expressly applicable to causes of possession; and indeed within the last few years the ancient jurisdiction of the Admiralty in cases of disputed title has been acknowledged and confirmed by an Act of the British Parliament. Nor can there be any doubt that the case before us is a cause of possession, and within the jurisdiction vested in this Court as to such cases. Generally the occasion for the exercise of this jurisdiction arises in cases between part owners who cannot agree respecting the employment of their ships; and the Court having in such cases jurisdiction to detain a vessel at the instance of one part owner, it must *à fortiori*, have jurisdiction to detain her at the instance of the real owner against a mere wrongdoer. The enormous amount of mischief and injustice which might be perpetrated if the Court had not such power is too obvious to require comment; and fully justifies *Lord Tenterden's* remark in *Blanchard's* case, that this jurisdiction of the Court of Admiralty is a most useful part of the jurisprudence of the country (c); and if a practical illustration of the correctness of this remark were required, it would be hard to find one stronger than the present case.

Having, then, clear jurisdiction in the cause, this Court has necessarily the right of deciding every incidental question which arises in it: and the validity of the war-

(c) In the matter of *Blanchard, Baxter, and others*, 2 Barn. & Cress. 244.

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rants under which the Haidee was seized, and the jurisdiction of the two Justices who issued them are such incidental questions. Now, the seamen, at whose instance the proceedings were instituted in which these warrants issued, were engaged for a voyage from Plymouth to Quebec and back to a final port of discharge in the United Kingdom, and could not therefore under the 190th section of the Merchant Shipping Act, sue in any Court abroad for wages, and could not sue at all until the service had terminated, or until they had been discharged. The service had not terminated, and the seamen were not discharged; and it is certain that the Justices could not give themselves jurisdiction in this case, by finding that as a fact which was not a fact (*d*). They were therefore absolutely without jurisdiction, and the whole proceedings were *coram non jndice*, and the orders and warrants founded on them were of course also void. The two Justices may have been deceived; but from the hurried and unusual manner in which they allowed the whole proceedings to be conducted, it is clear that the necessary amount of precaution to avoid deception, was not used by them. The very ship's articles were not produced or required, though it is proved by Mr. Maguire, and by Mr. Pope, that the seamen had in the previous case before Mr. Maguire admitted the articles, and their Attorney, Mr. O'Farrell, must have known that no seaman could be legally brought from the United Kingdom to Quebec without articles; and if the claims for wages had been brought in the usual manner before Mr. Maguire, he would undoubtedly have required the production of the articles before him; and want of jurisdiction, arising from the non-termination of service, being thus made patent, the cases must have been dismissed. But the Justices were further deceived, inasmuch as Kellow, against whom the proceedings were taken and the

(*d*) *The Scotia*, L. C. Ad. 274, vol. i. p. 164.

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orders made, was not then master of the ship, and had not been so since the 15th of October, or for upwards of three weeks before the proceedings were instituted; and the only case in which the amount awarded in any order made by Justices of the Peace, directing payment to be made of seamen's wages, can be directed to be levied by distress and sale of the ship and tackle, is when the party directed to pay the same is the master or owner of the ship. (Merchant Shipping Act, sec. 523.) The reason of this provision is obvious, the ship cannot be seized upon an order made against a person who, at the time it is made, is neither owner nor entrusted with the possession or control of her. Even if the Justices had had jurisdiction, and the orders had been valid as against Kellow, the former master, they could not have justified the seizure of the vessel; and Keane, the new master, and his people showed great forbearance in not resisting by force an attempt to seize the vessel under illegal pretences. Their resistance would have been justifiable, though the consequences might have been lamentable.

In this view of the case it becomes unnecessary for me to inquire into the legal effect of the arrangement which Mr. Ritchie was induced to enter into with Mr. O'Farrell, the Attorney of the seamen, in order to recover quietly possession of the vessel, so that she might proceed on the voyage which she had commenced. Nor is it perhaps necessary to comment upon the attempt now made to revive and enforce the warrants after a lapse of four years, and against a *bona fide* subsequent purchaser and owner into whose hands the vessel passed upwards of three years ago, without notice, and under whose ownership the vessel has made several voyages to this port; the warrants having been moreover once executed by the seizure of the ship, which terminated in the arrangement made by Messrs. Ritchie and O'Farrell. Admitting, hypothetically, that the service had terminated,—that the seamen were

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entitled to recover their wages,—that the proceedings before the Magistrates were regular,—that the order against Kellow, who was not master, could be enforced against the ship, under the command of another master,—and that the seamen had a maritime lien upon the vessel,—still no case under the English law can be found in which such a lien has been enforced after so long a lapse of time and the passing of the vessel into the hands of a third party without notice. By the law of France such a lien is extinguished if, after a voluntary sale, the vessel has made a voyage in the name and at the risk of the new purchaser, and without objection on the part of the privileged creditor of the vendor. The celebrated Marine Ordinance of Louis XIV., confines this privilege to the wages of the sailors employed on the last voyage, which provision, with the qualification just mentioned, is also found in the present Commercial Code of France (e). The law of England has adopted no arbitrary rule on this subject, but holding the lien not to be indelible, leaves the circumstances under which it shall be enforced, as against third parties, to the discretion of the Courts, to be exercised as justice may require in the peculiar circumstances of each case, when one of two innocent parties must necessarily suffer by its being allowed or disallowed (f): no stronger case than the present could arise for its disallowance.

Under these circumstances the Court can have no hesitation in dismissing the claim of Kinsley, and relieving the owner from all liability under the bail given by him in this cause, with costs against Kinsley.

Jones and Hearn, for the Promoter.

Dunbar Ross, Q.C., and John O'Farrell, for the claimant.

(e) Ordonnance de la Marine, Liv. 1, Tit. 14, Art. 16. Code de Commerce, Liv. 2, Tit. 1, Art. 193.

(f) The *Hercyna*, L. C. Ad. B. 274; Flanders on Maritime Law, § 495, p. 403.

3rd July, 1860.

ELLERSLIE—VICKERMAN.

Where description of voyage in shipping articles is as one to the United States: *Held*, to be a good description under the terms "Nature of the Voyage" in the Merchant Shipping Act, 1854.

JUDGMENT.—*Hon. Henry Black.*

In this case the question submitted to the Court is whether the articles of the ship *Ellerslie* do or do not warrant the master in bringing that ship to Quebec as a place within the description of the voyage contained in the articles entered into by the seaman, who was the complainant before the magistrate; or whether these articles were void from the beginning for uncertainty.

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The voyage as described in the articles is as follows:—
"From Hull to the North to load for Carthagera, thence to any ports or places in the Mediterranean, Black Sea, Sea of Azov, or rivers and seas adjacent, and any port or places in the United States, North and South America, or West Indies, wherever freight may offer, to and fro, and returning to any ports or places in the Baltic and seas adjacent, or on the continent of Europe, with leave to call for orders, and terminating finally in the United Kingdom, for a probable period of twelve months." Now, the description of the voyage as one to the United States is undoubtedly a good description, and the words North and South America, which follow, appear to me to include any place in North or South America, within a reasonable distance of the United States, and to which the ordinary course of trade might probably lead the master to take the ship. I do not think that these words would justify

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him in taking the ship to any place geographically within the immense continent of America, but I do think that they comport a reasonable latitude and discretion; and that the port of Quebec, which is in North America, and is nearer to the United States than almost any place in South America, is a port within such reasonable latitude and discretion, and that the articles have not been violated; and the men are not therefore entitled to sue before the magistrate for wages, the voyage being one which is to terminate in the United Kingdom. Neither do I think that the articles were void for uncertainty in the description of the voyage, the words United States being perfectly definite and good, and the words North and South America being in my opinion restricted to a reasonable distance from the United States. They are in fact to be interpreted as the word "elsewhere" would be if substituted for them. though they are certainly not so large as that expression if literally interpreted. And with respect to the words "or elsewhere," Lord Stowell, in the case of *The Minerva* (a), has declared that he had no hesitation in asserting that they are not to be taken in that indefinite latitude in which they are expressed, but that their construction must vary much according to the situation of the primary port of destination. The primary port or ports of destination being, in this case, any ports in the United States, and the articles expressly mentioning places, as for instance, the West Indies, which are more distant from the United States than Quebec is, I think that the last-mentioned port is within a fair and reasonable construction of the description of the voyage, without putting upon the words North and South America the extreme limits which in a geographical sense they would bear. They are in my opinion restrained to a certain extent by the words United States, but not so restrained as to have no force whatever, or to limit the voyage solely to ports of

(a) 1 Hagg. Adm. Rep. 361.

America which are within the United States. By this interpretation we give a fair force and meaning to all the words of the contract, which we should not do by interpreting the words North and South America as having no effect whatever.

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This case differs from that of *The Marathon* (b), inasmuch as in the articles of that ship the words were simply North and South America, without mentioning any place in either as a primary port, so that it was impossible to restrain their meaning to less than their geographical import, which included the whole continent of America, and every possible variety of latitude and climate; and in this sense I held them to be so indefinite as not to form a sufficient description of the voyage, or to give reasonable information to the seamen respecting it within the spirit and requirements of the Merchant Shipping Act. Had any place in North or South America been mentioned in those articles I should have been inclined to restrict the meaning of the words North and South America to places within a reasonable distance of that which I found mentioned therein, as I restrain them in the present case to places in America within a reasonable distance of the United States, and in the ordinary course of trade for British ships.

I think, therefore, that the service for which the seamen of the *Ellerslie* are engaged has not terminated, and as the voyage is one which is to terminate in the United Kingdom, the magistrate is without jurisdiction, and the complainant cannot sue for his wages before him.

(b) *Supra*, p. 9.

13th July, 1860.

AILSAL—ALEXANDER.

In a case of collision, where the evidence on both sides is conflicting and nicely balanced, the Court will be guided by the probabilities of the respective cases which are set up.

Owners of vessel proceeded against dismissed without costs.

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This was a cause of damage promoted by the owners of the barque *Henriette*, a Prussian vessel, against the ship *Ailsa*, of Cardiff.

JUDGMENT.—*Hon. Henry Black.*

On the 4th of June last, the Prussian barque *Henriette* of Dantzic, of the burthen of 334 tons, arrived at this port from Cardiff in Wales, and came to anchor abreast of the Montreal Ocean Steamship Company Wharf, about the middle of the stream, or about four cables length from the wharf. On the following day, in the early part of the afternoon, the ship *Ailsa*, of Cardiff, of the burthen of 565 tons, which had been at the ballast ground, dropped down with the tide, and came to anchor also abreast of the wharf, and a little below the *Henriette*, the master's intention being to discharge her cargo of coals on that wharf so soon as he could get a berth, which he expected to do on the following day. The distance at which he anchored from the wharf is variously estimated and stated by the witnesses examined in the cause, at from one cable's length to two cables' length. The tide was then ebbing. A little below these two vessels, and rather further out than the *Ailsa*, but not so far out as the *Henriette*, there was a third vessel, called the *Faithful*. When the tide turned, about four in the afternoon, all these vessels swung with it, and clear of each other. The wind during

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the afternoon was fresh, but not violent, from the East North East; that is, across the river from the Point Levy to the Quebec side, but in a direction rather up the stream. At about half-past nine in the evening, the tide turned and began to ebb; the Ailsa, the nearest in shore, felt the ebb first, the Faithful next, and the Henriette, being the furthest out in the stream, last. The Ailsa and the Faithful swung clear of each other, but when the Henriette was swinging, and while she lay across the stream with her head to the wind, the collision complained of took place, by the bow of the Ailsa being brought into contact with the Henriette's port side amidships, when the damage complained of was done. The two ships remained fast together, and drifted down the stream towards the Faithful. The people of that ship seeing them approaching, paid out more chain, and shifted their helm so as to sheer the ship in shore. The two vessels, nevertheless, passed so close to the Faithful, that the Ailsa's stern carried away the Faithful's jib-boom. They remained fast together until the following morning, and got clear of each other at slack water.

Upon these facts both parties agree, but when we come to the evidence, and opinions upon the causes which led to the collision, the statements are discrepant and contradictory. The people of the Henriette assert that their ship never dragged her anchor until after the collision, and that there was no fault committed on their part, or any act omitted to ensure their vessel's swinging properly. They assert that the Ailsa moved from her position, and struck them in consequence of so doing; and as their own estimate of the distance between the two vessels would seem to make this impossible,—while the Ailsa's anchor remained where it was when dropped, and when the vessel swung to the flood,—they state a very positive opinion that the Ailsa had lifted her anchor for the purpose of going to the wharf, and was, in fact, adrift, and carried

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out by the stream when the accident occurred. But, on the other hand, the evidence of the pilot, second mate, carpenter, and one of the seamen of the Ailsa, is most direct and positive that the anchor of the Ailsa was not lifted, and that the vessel had swung, and was lying with her head to the stream, in her proper position, when the Henriette came down upon them, broadside, their opinion being that the Henriette was adrift. So much for the conflicting evidence of the persons who were acting on board the two vessels, and who may be supposed to be, to a certain extent, biased in favour of their respective vessels. As regards the evidence of other parties, we have the mate and one of the seamen of the Faithful, who state positively that the Henriette did not drift, but, that while she was in the act of swinging fairly round, the Ailsa broke her sheer, and ran up and struck the Henriette. On the other hand, the masters of the Aurora and the Bacchus state that they saw the Ailsa in her proper position after swinging, and that they saw the Henriette drift down upon her broadside.

In this conflict of evidence there does not seem to be in the admitted facts of the case much that can tend to show that the witnesses of either party are correct in their views. On the one hand, the distance at which the Henriette is stated to have been from the Quebec shore is so great, that if it be correctly stated, it does not seem possible that the Ailsa and she could have come into collision and then drifted down so close to the Quebec shore as to strike the Faithful, without the Henriette's having shifted her position by dragging her anchor, more especially as the people of the Faithful paid out more chain and sheered in shore. But, on the other hand, it is certain that the Ailsa, when in her correct position, swinging to the ebb tide would be inshore of the Faithful, and could scarcely drift from that position outside of the Faithful as she did. If then the distances and positions

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given be correct, or nearly so, it would seem that the *Henriette* must have drifted more or less towards the Quebec shore, and also that the *Ailsa* must have sheered towards the South shore after swinging. These two movements might, supposing the distances correct, bring the vessels in contact, and cause them, after the collision, to drift downwards just outside of the *Faithful*, as they certainly did. The *Ailsa*'s people deny positively—and there is no reason to doubt their statement on this point—that they lifted their anchor; nor did their chain break when the strain of the two vessels came upon it. On the other hand, it is certain that the *Henriette*'s chain did break, for her anchor was lost; and there is nothing to show absolutely that the chain had not broken before the ships came into collision. It does not appear that the ebb would carry the *Ailsa* outwards if she were adrift, while it is certain that if the *Henriette* was adrift when swinging, the wind, which was strong and almost directly across the river, would carry her towards the Quebec shore and towards the *Ailsa*. On the whole, I am inclined to believe that the witnesses who state that the *Henriette* drifted upon the *Ailsa* are correct, and I think it probable that this was occasioned by the breaking of her chain before the accident. I think that it is also probable that the *Ailsa*, after swinging, had sheered outwards further than was absolutely necessary, but it does not appear to me that the accident can be fairly said to have been occasioned by her doing so. In this view the collision must be considered as having arisen from the misfortune of the *Henriette*, and not from any fault on the part of the *Ailsa*, or at any rate such fault is not proved with sufficient clearness to justify the Court in making her liable for the damage.

Under all the circumstances of the case, considering that the evidence on both sides is more evenly balanced than usually happens, I must pronounce that the *Ailsa* is not answerable for the consequences of the collision, and that the

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owners of that vessel must be dismissed. I shall, however, decline to accompany my sentence with any order as to costs. I can give no costs.

Richard Pope, for the *Henriette*.

Jones and Hearn, for the *Ailsa*.

Friday, 21st September, 1860.

ANNE JOHANNE.—LARSEN.

The Court of Admiralty has jurisdiction in cases of collision occurring on the high seas, where both the vessels are the property of foreign owners.

Questions of collision are questions *communis juris*, and in cases where both parties are foreigners, the important distinction is, whether the case be *communis juris* or not.

In a case of damage by collision : *Held*, to have been the result of inevitable accident arising from foggy weather, and the vessel proceeded against dismissed accordingly.

Where damage is occasioned by unavoidable accident, the loss must be sustained by the party on whom it has fallen.

The law imposes upon a vessel, having the wind free, the obligation of taking proper measures to get out of the way.

This was a cause of damage promoted by the owners of the brig Ferdinand, a French vessel, against the Norwegian barque Anne Johanne, under the circumstances noticed in the following judgment of the Court :—

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JUDGMENT.—*Hon. Henry Black.*

This is a suit brought by Ferdinand Dubois, of Rosny, in the department of La Vendée, in France, and Jean Adolphe Pellerin of the town of Tonnay Charente, in the department of Lower Charente, in France, owners of the brig Ferdinand, of the burthen of 251 tons, English measurement, built at Sables d'Olonne in France, and commanded by Jean Adolphe Pellerin, one of the owners, against the Norwegian barque Anne Johanne, of the burthen of 355 tons, English measurement, whereof Lars Andrias Larsen is master, for damages arising from the loss of the Ferdinand, in consequence of a collision between her and the Anne Johanne, in the North Atlantic Ocean, on the 20th of June last, in about forty-five

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degrees north latitude, and between forty-five and forty-eight degrees west longitude from Greenwich.

On the part of the *Ferdinand* it is alleged, in the pleadings, that on the 8th of June last, she sailed from Bedford, in the United States of America, with a cargo of whale oil, bound to the port of Havre in France. That in pursuing the said voyage, she was, upon the 20th of the same month, about half-past five in the afternoon, in the North Atlantic Ocean, east of the Great Bank of Newfoundland, and in about $44^{\circ} 50'$ north latitude, and $48^{\circ} 10'$ west longitude from Greenwich, with the wind north west, blowing a gentle breeze, and the vessel steering east-south-east, under all sails nearly squared on the port tack, port studding sails included, and running about five knots an hour, the weather being a little foggy, and a bell kept ringing on board in consequence, the *Anne Johanne* was seen on the port side of the *Ferdinand* at about one hundred and fifty fathoms, and steering about west-south-west. That the master of the *Ferdinand*, who was then on deck, and close by the wheel, immediately put his helm a-port, and hailing the *Anne Johanne*, shouted loudly and distinctly "luff, luff," making a sign with his arm to that effect. That the *Anne Johanne* instead of keeping her course, or porting her helm, put it hard-a-starboard, in order to pass ahead of the *Ferdinand*, thereby bringing the wind more on the beam of the *Anne Johanne*, and consequently increasing her speed, and rendering inevitable a collision between the two vessels, which might have been avoided had the *Anne Johanne* kept her course, or put her helm a-port. That almost immediately afterwards the two vessels came into collision, the *Anne Johanne* striking the *Ferdinand* with the speed of about nine and a half knots, on her port side, immediately opposite the main-mast. That the *Anne Johanne* breaking her own jib-boom and bob-stays against the *Ferdinand*, her bow-sprit came into contact with the

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Ferdinand's main-mast, and broke it close to the deck, carrying away the spanker and tearing away the spanker mast, after which the cut-water of the Anne Johanne repeatedly struck the Ferdinand on her port-side, and thereby broke the shrouds and chains, and forced up the deck on either side. That during the collision, the Anne Johanne was kept under all sail, without letting go her halyards, thereby greatly increasing the violence of the collision. That other and very great damage was done to the Ferdinand by the collision so that she became a complete wreck, leaking very fast, and being loaded with a full cargo of oil, would, upon her filling with water, have capsized and immediately endangered the lives of her crew; and that she was thereupon necessarily abandoned. That the crew went on board the Anne Johanne, but that the master of that vessel refused to endeavour to save the effects on board the Ferdinand and ordered her boats to be cast off, and sail to be made on the Anne Johanne. That the collision occurred solely through the inattention and want of skill of the persons on board the Anne Johanne; and would not have occurred if the master of the Anne Johanne had not put his helm to starboard contrary to the rules of navigation, and that it did not occur from any inattention or want of skill of the persons on board the Ferdinand. The cargo of the Ferdinand is alleged to have been worth £6000 sterling, the freight she would have earned £1000 sterling, and the value of the vessel to have been £1500 sterling, the damages claimed being £3000 sterling.

On the part of the owner of the Anne Johanne (John Abrahamsen, of Kragero in Norway), it is pleaded that having sailed from Kragero in ballast for Quebec, on the 2nd of June last, she was, on the 20th of that month, at about six in the afternoon, in the North Atlantic Ocean, to the eastward of the Great Bank of Newfoundland, in latitude 45° 15' North, and longitude 45° 54'

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West from Greenwich. That the wind was then West North West, and the vessel was steering a course South West. That she had been on the starboard tack all that day. That the watch and all hands being on deck, the mate who was on the look out on the fore-castle, gave the signal, "ship ahead," when the fog-horn, which had been kept sounding all day at intervals of a minute, was immediately sounded by the mate. That the *Ferdinand* was then approaching directly the hawse of the *Anne Johanne*, and was at the distance of about fifteen fathoms or half a ship's length from the *Anne Johanne*; that orders were then given to put the *Anne Johanne's* helm hard a-port, and back the sails; that the helm was put hard a-port, but there was not sufficient time to back the sails completely; and that the jib-boom of the *Anne Johanne* came into contact with the main rigging of the *Ferdinand*, striking her about midships on the larboard side. That the sails were immediately clewed up; and that after some of the rigging of the *Ferdinand* had been cut away, the *Anne Johanne* passed clear and under her stern; and after taking on board the crew of the *Ferdinand*, and effecting certain repairs which the collision had made necessary, proceeded on her voyage, and arrived at Quebec on the 16th of July last. That the loss of the *Ferdinand* was not occasioned by any inattention of those on board the *Anne Johanne*, but by the negligence, inattention, want of skill, hesitation, and want of exertion on the part of those on board the *Ferdinand*.

No question of jurisdiction has been raised, but it may be as well to premise that Courts of Admiralty jurisdiction in England and America have uniformly held that they have jurisdiction over foreign vessels in all cases of collision, where the proceeding is *in rem*, and the vessel is within the local jurisdiction of the Court. These cases are *communis juris*; there is no matter of contract involved in them, and the municipal laws of the countries

in which the parties may have their permanent domicile cannot apply. The proper forum for the proceeding is the *locus rei sitæ*; and it must be evident that justice requires this; for, in the great majority of cases, if the courts of the country in which the vessel proceeded against may be, could not or would not entertain the suit, the only real and efficient proceeding and remedy would be utterly lost. The case is therefore regularly before the Court, and to be determined upon its merits.

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There is no difference, which can affect the decision, in the allegations of the two parties in their pleadings, the evidence they adduce, or the protests made by the respective masters on their arrival and filed in the cause, as regards the place and time when and where the collision occurred. Both agree that it was in the North Atlantic Ocean, and the slight difference between them as to the latitude and longitude in nowise affects the merits. Both agree also that it was in the afternoon, some hours before sunset, and the difference between them as to the exact time, does not amount to more than half an hour, and is immaterial. Both agree also that the weather was and had been for some time before foggy, so much so that both assert that they had been using their fog-horns, and the people of the Ferdinand assert that they used a bell also, for some time before. They agree also very nearly as to the force and direction of the wind, and as to the courses of the vessels immediately before the collision, the slight difference in the statements of the two parties not being such as to affect the case, both agreeing that the Ferdinand was going with the wind many points free or nearly before it, or having it a little on her port quarter, and that the Anne Johanne was close hauled on the starboard tack, and that it blew a fine fresh breeze (*une jolie brise*). They agree about the rate at which the Ferdinand was sailing, which was about five knots; and the people of the Anne Johanne state their speed at about five or six

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knots, but the people of the Ferdinand estimate that of the Anne Johanne at about nine knots, stating that the people of the Anne Johanne told them so after the collision. It seems probable that the speed assigned to the Anne Johanne by her own people was nearer the truth : but the assertion of the Ferdinand's people is in favour of the Anne Johanne, as diminishing the time during which she would run the distance which was between the vessels when they first saw each other. This distance is variously stated in the pleadings and evidence ; in the preliminary act filed on behalf of the Ferdinand, it is stated at 150 fathoms, and the evidence on behalf of that vessel does not materially differ from this statement, the highest estimate by any witness on that side being 200 fathoms. In the preliminary act filed on behalf of the Anne Johanne, it is stated at 10 fathoms, in the plea at 15 fathoms, and in the evidence adduced at two ships' length, which may be about 40 fathoms. The time between that when either vessel first saw the other and the collision, is stated in the evidence on behalf of the Ferdinand at about two minutes ; and in that on behalf of the Anne Johanne at about half a minute. Both statements as to time and distance are probably more or less erroneous, and the almost impossibility of correctly estimating time in cases of excitement is universally admitted and commented upon by all authors, and the time is almost always over-rated. Taking the distance and the speed of the Anne Johanne to be as stated by the Ferdinand's people, the time in which she would pass over it would be a little over one minute, and if her speed were that stated by her own people, it would be a minute and a half ; and if we take the distance and the speed of the Anne Johanne to be rightly given by her people, the time would only be one-tenth of this, or nine seconds. The truth probably lies between the two statements, and the average of them would be about a minute. The greater time and distance

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would be in one respect against the Ferdinand, because it was clearly her duty to put her helm up immediately on perceiving the Anne Johanne, and thus to run away from her, and if this had been done two minutes before the collision, the vessels would have been running more nearly in the same direction, and the Anne Johanne could not have struck the Ferdinand nearly at right angles, as she appears to have done; and if the Anne Johanne starboarded her helm, as the Ferdinand's people assert, the courses of the two vessels would have been more nearly parallel. As regards the manœuvres of both vessels when they saw each other, the evidence is, as is usual in such cases, directly contradictory. The people of the Ferdinand assert that the Anne Johanne starboarded her helm, and upon this assertion the claim on the part of the Ferdinand rests: but they can speak only as to their belief founded on what they were able to see from the deck of the Ferdinand, and in a short interval of great excitement and hurry, and the evidence of the Anne Johanne's people is positive and clear that her helm was never starboarded; the mate (Halvor Olsen) swears distinctly and positively that he gave the order to port the helm, immediately the Ferdinand was seen, and that he saw that it was obeyed; and in this statement he is confirmed by the other witnesses, who were on deck and formed part of his watch. There seems no reason to question this positive evidence on the ground that the crew of the Ferdinand express a contrary opinion. On the other hand, we must take the assertion of the Ferdinand's people, that her helm was ported as soon as the Anne Johanne was seen, to be true; though the Anne Johanne's witnesses express a contrary opinion. As regards the look-out kept by each vessel, it appears that the mate of the Anne Johanne was, immediately before the accident, on the round house, which was higher than the deck, for the express purpose of looking out, and there were six men on deck. On board the Fer-

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dinand, all hands were on deck, but no one is alleged to have been specially on the look-out,—the men were about to go to supper on deck, and the first person who discovered the Anne Johanne was the apprentice, Joseph Monnier, who was at the helm and gave the alarm. The look-out may, therefore, be said to have been better on board the Anne Johanne than on board the Ferdinand; but, as the mate of the Anne Johanne could not see the Ferdinand until, as he says, about twenty-five seconds before the collision, the accident cannot be fairly said to have been occasioned by any want of look-out.

Taking the evidence of the crew of each vessel to be true, as to the facts which passed on board their own vessel, and under their own eyes, and in which they bore their part, it appears that each did the best that the time and circumstances would allow, to comply with the rule of navigation, by which the Anne Johanne, being on a wind, was entitled to keep her course, and the Ferdinand, having the wind free, was bound to take proper measures to get out of the way. This rule is universally acknowledged by all maritime nations, and the Ferdinand having failed to prove that it was violated by the Anne Johanne, this action, which could be sustained only on the ground of such violation,—proved by unquestionable evidence,—must necessarily fail. Had the state of the weather been such as to enable the vessels to see each other at a sufficient distance, it would have been the duty of the Ferdinand to have taken such measures and execute such manœuvres as were necessary to avoid the collision; but she is entitled to the benefit of the evidence adduced against her, and this evidence is, that the people of the Anne Johanne, though keeping a very careful look-out, could not see the Ferdinand until about half a minute before the collision, a time which was not sufficient, under the circumstances of excitement and confusion always attending cases of sudden danger, to enable the Ferdinand

to avoid the collision. The case, therefore, appears to the Court to have been one of inevitable accident, which neither party could possibly prevent by the exercise of ordinary care, caution, and maritime skill. The rule in such cases is, that the loss must be sustained by the party on whom it has fallen, leaving each party to pay his own costs: and I decree accordingly.

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Lelievre and Vannovous, for the owners of the Ferdinand.

Jones and Hearn, for the owner of the Anne Johanne.

Tuesday, 30th October, 1860.

AURORA—MORRISON.

As between a British and a foreign ship, within Canadian waters, the Act regulating the Canadian waters must be the rule of the Court; the duty and the right of both parties are to be determined by it.

Power of the Canadian Legislature extends to foreigners when within our own jurisdiction.

If a collision occur in the night between two sailing vessels in the St. Lawrence, by the non-observance of the rule respecting lights, the owner of the vessel by which such rule has been infringed cannot recover for any damage sustained in the collision.

AURORA.

This was a cause of damage promoted by the owner of the barque Juno, a Norwegian vessel, against the British ship Aurora, under the circumstances noticed in the following judgment of the Court:—

THE COURT.—*Hon. Henry Black.*

In this case the suit is brought by Bockman Knoph, of Krageroe, in Norway, as owner of the barque Juno, of that port, against the British ship Aurora, of Aberdeen, in Scotland, to recover £6500 sterling, as the damages sustained by the total loss of the Juno, in consequence of a collision with the Aurora, in the lower part of the River or Gulf of St. Lawrence, in September last. The question involved is one of very considerable importance both as regards the amount and the legal points on which the decision depends.

The Juno, a barque of the burthen of 445 tons, commanded by Jens Larsen, sailed from Sunderland, in the United Kingdom, on the 16th of July last, bound for Quebec, with a cargo of coals. The Aurora, a ship of

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629 tons burthen, commanded by Alexander Morrison, sailed from Greenock, in Scotland, on the 13th of August last, also bound for Quebec, with a cargo of coals. No incident affecting the case occurred to either vessel until the 13th of September last. On that day, at about half-past two in the morning, both vessels were in the mouth of the St. Lawrence, between Cape Rosier and the island of Anticosti, and a little to the westward of the lighthouse on the Cape, and about ten or twelve miles from it, beating upwards towards Quebec, close-hauled on opposite tacks, the Juno being on the starboard, and the Aurora on the port tack. The Juno heading north-west and a half north, and the Aurora about east, both vessels running at the rate of from five to six knots, the wind being about north-north-east, blowing a top-gallant breeze, and the weather being dark and cloudy, but not foggy. As to these facts there is no difference in the evidence adduced by the two parties. The vessels were thus approaching each other obliquely, when, according to the statement of the Juno's people, the green light of the Aurora was seen three or four points on the port bow, at a distance of about a mile; and about five minutes afterwards the Aurora's sails were seen about three or four cable-lengths off: and the Juno's people go on to say, that her master and crew seeing that the Aurora was not altering her course, but was coming directly towards them, and that a serious collision was inevitable unless the Aurora's helm was immediately put hard a-port, hailed the Aurora to do so, but observing that her course was not altered, they put the helm of the Juno hard-a-port until the sails were all a-back. On the part of the Aurora it is stated in evidence, that the mate and all his watch, but one, were on deck, and a good look-out kept, but that neither the Juno, nor any light on board of her was visible until the look-out suddenly perceived her sails at about a cable's length from the Aurora, and that he called out immediately, when the mate, not

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being able to see her from where he was standing aft, immediately ran forward to the look-out man who pointed her out. It is further stated in the evidence on the part of the *Aurora*, that in consequence of the *Juno's* having no light visible, some short delay occurred before it was possible to ascertain what tack she was on; but it being then ascertained that she was approaching the *Aurora*, the mate ordered the helm to be put hard-a-port, which was instantly done: and the master coming on deck let go the mizzen sheet to make the ship pay off as quickly as possible. That she did pay off immediately, but before she could wear round, the *Juno* being so close upon her, and having her sails aback instead of having head way, it was too late to prevent the collision; and the stem of the *Aurora* struck the *Juno* on her port side about the mizzen chains, with such force that the *Juno* sank about ten minutes afterwards; the crew being saved by the *Aurora*, and brought by her to Quebec.

It is proved that the *Aurora* was lighted in the manner prescribed both by the Admiralty Regulations, and by our own Act, 22nd Vict. chapter 19, for regulating the navigation of Canadian waters, which makes precisely the same provision, and this is not denied on the part of the *Juno*. By the Regulations and the Act, sailing vessels, when under way, are required between sunset and sunrise to exhibit a green light on the starboard side, and a red light on the port side of the vessel, and such lights are to be so constructed as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and show an uniform and unbroken light over an arc of the horizon of ten points of the compass, from right ahead to two points abaft the beam on the starboard and on the port sides respectively. On the part of the *Juno* it is alleged generally in the pleadings that she was lighted according to law, her lights being bright and placed in such position as to enable vessels approaching her to see

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them at a long distance. But in the evidence on her behalf we find that these lights were put on each forward corner of the round house which was placed close to the foremast and reached to within six feet of the main hatch, and was about twenty feet long and six feet high, and about four feet from the sides of the vessel; the lights were placed about a foot and a half above each corner. They were not therefore on the *sides* of the vessel; and it is proved by Frederic Samson, one of the witnesses for the Juno, and a pilot for the river St. Lawrence by profession, that the foresail when set covered the lights so that they could not be seen by a vessel approaching the Juno except from astern; and that about four hours before the collision, perceiving a pilot boat beating up ahead of the Juno, he advised her mate to raise up the foresail "on its buntlines," in order to make the lights visible to vessels ahead. He thinks that the bunt of the sail was hauled up accordingly, but both he and others say that the clews of the sail were not raised, and he says expressly that the clews would prevent a vessel approaching the Juno from one side, as the Aurora did, from seeing the lights, and that the Aurora could not see the lights, unless she was behind the Juno. Upon this evidence, which is uncontroverted, and which is perfectly consistent not only with that adduced on the part of the Aurora, but also with the other evidence on the part of the Juno, the whole question appears to me to turn. The Juno was not lighted in the manner required by the Act regulating the navigation of Canadian waters; she had the lights (red and green) required by the Act, but they were not placed on her starboard or on the port side as required, nor "so that they could show an uniform and unbroken light over an arc of the horizon of ten points of the compass from right ahead to two points abaft the beam on the starboard and on the port sides respectively." The twelfth section provides, "that, if in any case of collision, it appears to the

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Court before which the case is tried, that such collision was occasioned by the non-observance of the foregoing rule, the owner of the vessel by which such rule has been infringed, shall not be entitled to recover any recompense whatever, for any damage sustained by such ship in such collision, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary." This Act appears to me clearly to apply to the case, the collision having taken place in Canadian waters, and in consequence, as I think the evidence shows, of the non-observance of the requirements of the Act; and I am therefore of opinion that the suit on the part of the owner of the *Juno* must fail.

It is of the highest importance that an Act passed as this was, "for the greater security of life and property in vessels navigating the Canadian waters," should be strictly observed, and there is not, nor ought there to be, any distinction made in the Act between British and foreign vessels. The Legislature had a clear right to bind the latter when within its own jurisdiction (*a*), and it would have been productive of the greatest inconvenience if this right had not been exercised. But the requirements of this Act agree precisely with the Admiralty Regulations,—made under the authority of the Merchant Shipping Act, 17 & 18 Vict. c. 104, now in force,—and those in force in Sweden and Norway, under the Royal Ordinance passed at Stockholm, on the 25th August, 1852, made with express reference to the regulations then in force in Great Britain, at the desire of the British Government, and for the purpose of avoiding collision during the night, imperatively require that a bright light should be shown by sailing vessels in such manner that it may be best observed by another vessel, and in such good time as to avoid collision. Even with this regulation, which corresponded with the then existing Admiralty Regulation of England,

(*a*) *The Milford*, Swabey, 367.

and which was superseded by our own Act as soon as the vessel came within Canadian waters, the *Juno* certainly did not comply. Nor by the general maritime law could a party recover damages for an accident occasioned by his own neglect of precautions manifestly requisite to avoid it. Lights are in every country held to be absolutely necessary to avoid collisions at night, and the having lights, and then suffering them to be so covered that they cannot be seen by vessels approaching, could not in any country, or under any law, be considered other than a gross act of negligence. The result is, that I pronounce against the claim of the owner of the *Juno*, and with costs.

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Jones and Hearn, for the *Juno*.

Thomas Pope, for the *Aurora*.

Friday, 19th July, 1861.

LOTUS—CLARK.

For a collision occasioned by the mismanagement of a pilot taken on board and placed in charge of a ship in conformity with the requirements of the law, enforced by a penalty, the vessel is not liable.

The mode, the time, and the place of bringing a vessel to an anchor, are within the peculiar province of the pilot who is in charge.

When a vessel is lying at anchor, and another vessel is placed voluntarily, by those in charge, in such a position that danger will happen if some event arises, which is not improbable, those in charge of the second vessel must be answerable.

It is the practice of the Admiralty Courts not to give costs on either side where the damages have been found to proceed from the fault of the pilot alone.

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This was a cause of damage by collision promoted against this vessel by the owners of the ship *Washington*, under the circumstances stated in the following judgment of the Court:—

THE COURT.—*Hon. Henry Black.*

This suit is brought by James Bunten and James Bunten, junior, both of Glasgow, in Scotland, sole owners of the ship *Washington*, against the ship *Lotus*, owned by Henry Fry, of Quebec, and Mark Whitwell, and John Allward, of Bristol, to recover damages arising out of a collision between those ships, which took place in the harbour of Quebec, on the 12th of May last. The *Washington*, a vessel of the burthen of 989 tons, arrived at Quebec on the 11th of May, about eight in the morning, having on board 620 tons of coal, and 100 tons of ballast, and came to anchor opposite Dumlin's wharf, on the Quebec side of the river, and about one-third of a mile

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from it, in about twelve fathoms water, and rode by her port anchor with about thirty fathoms of chain out ; she lay in a safe berth clear of all other vessels, and swung with the tide without any difficulty. The Lotus, a ship of 824 tons burthen, arrived about four o'clock in the morning of the following day, being then in charge of a Branch Pilot who had come on board at Bic. She had a cargo of coals, to be delivered at the Montreal Ocean Steamship Company's wharf, and her master wished her to be anchored as near as might be to that wharf, which is below Dumlin's wharf. She came to anchor above the Washington, and inside of her, but the exact distance at which she anchored from the Washington is disputed. When she anchored the tide was about slack after ebb, the vessels in port were in the act of swinging, the wind being from the east and blowing a fresh breeze. The Washington and the Lotus swung safely round with the flood without accident; they appear also to have swung safely round with the ebb. But soon after the tide turned to ebb, and about 10 A.M., the Lotus broke her sheer, and swinging outwards, came into collision with the Washington,—her port quarter striking the Washington's starboard bow,—and swung round with her side to the stream, the jib-boom of the Washington passing between the main and the mizzen masts of the Lotus; the anchors of both ships then dragged, and they drifted together down stream, until they came into contact with the Margaret Pollok, which lay a short distance below them on the port quarter of the Washington. The Washington's port bow struck the Margaret Pollok's starboard bow; the Margaret Pollok's anchor also dragged, and the three vessels drifted together down the stream, and they afterwards became entangled, first with the Kalos, and then with the Equity, and the five vessels drifted together with a strong ebb tide until they were brought up by their anchors holding on the Beauport bank, at the west end of the Island of Orleans. In

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this collision the damage complained of was done to the Washington. The ships were not freed from each other until the flood, when they got clear with the assistance of their sails and of a tug steamer.

These are the undisputed facts of the case; on certain other points the allegations of the respective parties, and evidence adduced by them, are more or less at variance. The owners of the Washington allege that the collision arose from the Lotus having come to anchor too close to the Washington (about a ship's length from her), and having given the latter a foul berth, so that if she broke her sheer and swung towards the Washington, the latter could not avoid her; and the collision, which actually occurred, must become inevitable. They allege also that the Lotus was under no necessity to anchor so close to the Washington; but that on the contrary there was at the time the Lotus came to anchor, ample room for her to have taken such a position as would have avoided all risk of collision, and therefore that the damage was occasioned solely by the negligence or want of skill of the persons on board the Lotus.

On the part of the Lotus it is alleged in defence, that she came to anchor at a proper and safe distance of from 120 to 130 fathoms from the Washington, and did not therefore give her a foul berth. That there was at the time of the collision a very strong breeze blowing from the eastward, and that at this time the Washington being light, had run ahead of her anchor, and was by this cause only brought so much nearer the Lotus, that when the latter broke her sheer the vessels came into collision in consequence, and would not otherwise have done so. That the pilot in charge of the Lotus used every endeavour, and adopted all proper means to keep her steady, placing a man at the wheel, and sheering away from the Washington towards the Quebec shore, and setting the foretopmast sail to assist in keeping her steady; and that it was the

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violence of the wind, and not any fault or negligence of the persons on board her, which caused the Lotus to break her sheer. It is alleged also that when the Lotus canted across the Washington, the Lotus set all her jibs, and the foresail, in order to get clear; and that the collision was occasioned solely by an accident, which those on board the Lotus could not avoid. It is also alleged that the Lotus was at the time of the collision, and at the time when she came to anchor, in charge of a branch pilot, who had been taken on board and placed in charge in conformity to the requirements of the law, and by whom all the movements of the vessel were directed. It is not alleged that there was not ample room in the harbour to allow the Lotus to anchor at a greater distance from the Washington; but only that the harbour was at the time so crowded with ships that it was impossible to anchor in any position near to the Montreal Ocean Steamship Company's wharf, and at a greater distance from the Washington.

The evidence adduced is to a certain extent contradictory. That of the master, chief mate, and four of the seamen of the Washington, almost repeats the allegations of the libel, and in every respect supports it. The owners of the Washington have also examined the master, mate, and one of the seamen of the Margaret Pollok, and the masters of the ships Arran, Tara, and Cuthbert, whose evidence is also confirmatory of the allegations of the libel; and they all deny that the Washington ran up to or ahead of her anchor. There is no doubt that the Washington was at anchor first, and that the Lotus did not come in till the next day. The master of the Arran says he saw the two ships from the Durham Terrace on the morning of the collision, and observed that there would be mischief, and that about a quarter of an hour afterwards he saw the Lotus drift down upon the Washington. The master of the Margaret Pollok says he saw the two ships from his own vessel, which lay near them, on the same morning,

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and that they were about half a cable's length from each other, and remarked that there would be an accident, unless the weather moderated. The master of the Cuthbert says that the Washington lay about two cables' length from the Cuthbert, and that the Lotus lay between them, but about half a cable's length closer to the Washington; that he also saw them on the morning of the collision, and that he saw the Lotus break her sheer, and drift down upon the Washington; that the Lotus sheered very badly, and that he saw a man steering her all the morning; that the Washington was very steady upon her anchor; and that the collision occurred through the fault and negligence of the persons on board the Lotus, and could not have been avoided by any thing to be done by the Washington. The master of the Tara says he saw the ships from his own, which lay near them. The Lotus was about a good ship's length ahead of the Washington, in an angular direction. That the Tara put a strong strain upon her chain with the ebb tide, and that the ships around him did the same, and showed no disposition to run up to their anchors. That he observed the Lotus sheer a great deal in the morning, and thought she was badly steered. That he afterwards saw the ships from the Durham Terrace, and saw the Lotus drift down upon the Washington.

On the part of the Lotus, the evidence consists of the master, mate, and five of the seamen of the vessel, the master and mate of the Nicaragua, and the pilot of the Cuthbert. The master of the Nicaragua says his ship was close to both, and that he observed them particularly. He does not think the Lotus gave the Washington a foul berth. He supposes that the Washington, being a light ship, was ahead of her anchor, the wind being sufficient to run any light ship up against the tide, for he did not observe her drift down as the Lotus did. He saw the Lotus break her sheer, but from what cause he does not know. Immediately after she was checked by her anchor, she struck

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the Washington's bow. He observed that there would be an awful collision unless the Washington slackened her chain. He thinks the ships had a fair berth on the flood, and a foul one on the ebb, because he thinks the Washington ran ahead of her anchor. He is not prepared to swear that she did so, but thinks she must, because she was a light ship. The evidence of the mate of the Nicaragua is nearly to the same effect as the master's. The evidence of the master and people of the Lotus, and that of the pilot of the Cuthbert, is in general confirmatory of the allegations of the defence; but the master says, "I did not apprehend any danger until the Lotus took a strong sheer, and the tide taking her on her broadside, swept her down towards the Washington." And the pilot of the Cuthbert says, that on the ebb the Lotus lay at about half a cable's length from the Washington, and on her starboard bow, and about a cable's length from the Cuthbert, and on her starboard quarter. On the morning of the collision he was coming to the Washington in a boat, and passed ahead of the Lotus. He saw her break her sheer, in spite of the efforts of the man who was steering her, and run towards the Washington; and when he saw that, he kept away from the Washington lest he should be jammed between the two ships. The Lotus was driving towards the Washington as if going to fall across her bows, and the Washington was running ahead of her anchor, with her bow towards Quebec. About two minutes after he first perceived the movements of the two vessels they came into contact. The Lotus hoisted her fore-topmast stay-sail as soon as she broke her sheer. He says that half a cable's length is considered a fair berth, if the ships sheer on the same way, but it would not be sufficient if they were not sheered to the same side. There is no allegation on the part of the Washington that proper measures were not taken after the vessels came into collision.

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There is the usual amount of discrepancy between the allegations of the parties, and between the statements of their respective witnesses ; but the weight of the evidence, and more particularly of the evidence of the witnesses unconnected with either vessel—taken with the admission of the master of the *Lotus*—and the undisputed facts of the case, would seem to show that in his desire to meet the wishes of the master to lie as near as possible to the Montreal Ocean Steamship Company's wharf, the pilot of the *Lotus* brought her to an anchor nearer to the Washington than, under the circumstances, it was safe or prudent to do ; and in so doing he ran the risk of the occurrence of certain events of the probability of which it was his business to be aware, which in fact did afterwards occur, which he ought to have foreseen, and against which he ought to have taken precautions, but did not ; and that it was by reason of the want of such foresight and precautions that the collision occurred. It is far from being proved that the Washington ran up to or ahead of her anchor, and the balance of evidence inclines to show that she did not ; those who say she did, support, if they do not found, their statement on the supposition that she was a *light* ship, but it is proved that she had on board 600 tons of coal and 100 tons of ballast, and as her tonnage was only 939, seven hundred tons would certainly prevent her being light. But whether she did or did not run up to or ahead of her anchor, her doing so was a possibility which the pilot in charge of the *Lotus* ought to have foreseen and provided against by giving her ample room, more especially as the wind was in the same quarter, and blew with about the same force when the *Lotus* came to anchor, as when the collision occurred. All the witnesses on both sides describe the *Lotus* as sheering heavily immediately before the collision, and at length breaking her sheer, and striking the Washington ; and nearly all describe her as drifting down upon the Washington before striking her, a circum-

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stance which seems to show that she dragged her anchor, either from the strain arising from her heavy sheering and her breaking her sheer, or from her having been anchored with too little chain out in order to avoid coming nearer the Washington, or going further from the wharf at which she was to discharge. I am, therefore, of opinion that the collision was occasioned by the want of proper precaution on the part of those in charge of the Lotus, and her coming to anchor nearer to the Washington than the rules of good seamanship warranted under the circumstances. It is clear that when a vessel is lying at anchor, and another vessel is placed voluntarily by those in charge, in such a position that danger will happen if some event arises which is not improbable, those in charge of such second vessel must be responsible for such damage (a).

While, however, I am of opinion that the collision was occasioned by the fault of those in charge of the Lotus, I am also of opinion that the person in charge was a branch pilot; and this brings me to the point urged in the defence, that the Lotus was at the time of the collision, and for some days before, not in charge of the master, or of any person employed or engaged by him, or by the owner, but was in the charge and under the control of Louis Asselin, a branch pilot for and below the harbour of Quebec, who was taken on board and placed in charge of the ship, in conformity with the requirements of the law; and that during all that time the movements of the vessel were directed by such pilot. Now, by the Act, 12 Vict. c. 114, to consolidate the laws relating to the powers and duties of the Trinity House of Quebec, and for other purposes, founded on a bill brought in by the Honourable Joseph Cauchon (the present Commissioner of Public Works), the former laws respecting pilots, for and below the harbour of Quebec, were repealed, and new provisions made; and by the 55th section of Mr.

(a) The Lidskjalf, Swabey's Rep. 119.

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Cauchon's Act, which is the law now in force, it is enacted, "That the master of any vessel arriving within the port of Quebec, and not having a branch pilot on board, who shall perceive at a reasonable distance, the boat or other small craft of a branch pilot, carrying at the mast head the distinctive pilot flag, shall, by lying to, if the weather permit, or by shortening sail, or other practicable means, facilitate the coming on board of such pilot, and shall give him charge of his vessel, under a penalty not exceeding ten pounds, over and above the full pilotage, which shall be payable to such pilot as shall have shown, by sign or otherwise, his intention to board the vessel and take charge thereof." This is undoubtedly a compulsory enactment, sanctioned by a penalty, and obliging the master to take a pilot, and to give him charge of his vessel, and making it unlawful to refuse to do so. In the recent decisions in the Court of Admiralty in England, it has been laid down as a settled principle that where the taking of a pilot is compulsory upon the master of a vessel, the owners are not liable for damages occasioned by the fault or incapacity of such pilot. In the present case I think it has been sufficiently shown that the collision was occasioned by the sole fault of the pilot of the *Lotus*, who was in charge of that vessel; for it is, I apprehend, an established principle of law that the mode, the time, and the place of bringing the vessel to an anchor are within the peculiar province of the pilot who is in charge (*b*); and there is no allegation or proof that the master of the *Lotus* in any way interfered with or controlled the pilot in the performance of this duty. Upon the rules of law adopted by the Court of Admiralty in England, it appears, therefore, that the owners of the

(*b*) *The Agricola*, 2 W. Rob. 10; *The George*, *ibid.* 386; *The Gipsey King*, *ibid.* 537; *the Christiana*, 7 Notes of Cases, 7; *Hammond v. Rogers*, 7 Moore's P. C. Rep. 171; *The Admiral Boxer*, Swabey, 193; *The Argo*, *ibid.* 462.

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Lotus are not liable for damages in this case, whatever be the recourse which the owners of the Washington may have against the pilot, or (under the late Act), against the corporation of pilots who receive the pilotage. The English decisions upon this point have been given independently of the express provision in the several British Acts, 52 Geo. III. c. 39, s. 30; 6 Geo. IV. c. 125, s. 55; and 17 & 18 Vict. c. 104, s. 188, which adopt the principle of the decisions above referred to, and enact that the owner shall not be liable in the case before mentioned (c). In this principle, which is simply, that no one can by law be responsible for the act of a person to whom he is compelled by law to give up the charge of his ship, and in whose appointment he has no voice, and over whose actions he has no control, —I cannot but concur; and it appears to me that it must apply to and govern the present case; as Dr. Lushington observes, “where the appointment rests with the owner himself, as in the case of the master and crew, it is reasonable that he should be held responsible for their acts who are agents selected by himself; and he is bound to provide persons of adequate skill, diligence, and sobriety. But where a person is compulsorily put on board the vessel and the owner’s authority is superseded by legislative enactment, it would be a violation of all justice to hold such owner responsible for the skill, sobriety, and caution of an individual with respect to whom he has no power of selection; whose qualifications he has no opportunity of deciding upon, but which are to be ascertained and determined by others; the owner himself being entirely debarred

(c) *The Protector*, 1 W. Rob. 45; *The Maria*, *ibid.* 95; *The Agricola*, 2 W. Rob. 10; *The Montreal*, 17 Jurist, 538; *The Admiral Boxer*, Swabey, 195; *The Argo*, *ibid.* 462; *the Ticonderoga*, *ibid.* 217; *Carruthers v. Lydebotham*, 4 M. & S. 77;

Lucy v. Ingram, 6 M. & W. 314; *The Carolus*, 2 Curtis, R. 71; *The Johanna Stoll*; *The Temora*, 1 Lush. 17; *The Bilbao*, 1 Lush. 153; *The Annapolis*; *The Johanna Stoll* (18th April, 1861), 1 Lush. 295.

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from any possibility of interference." Lord Ellenborough, in *Carruthers v. Lydebotham*, and Lord Wensleydale, in *Lucey v. Ingram*, have stated the same doctrine as law. I must here observe that, before the passing of Mr. Cauchon's Act, the law did not make it compulsory upon the master of a vessel coming into the port of Quebec to take a pilot, but merely provided that if he did not take the pilot who first offered his services, he should pay such pilot one-half of the usual pilotage, apparently as a compensation for the trouble to which he had been put by coming to the vessel (*d*). There was no penalty, or any provision making it unlawful not to take the pilot, and give him charge of the vessel, as there now is. Any decision, therefore, of this Court, or of any other Court in Lower Canada, with respect to the liability of the owner of a vessel for damage done by her while in charge of a pilot, given before the passing of Mr. Cauchon's Act, though perfectly correct at the time when it was given, would not be so if given under the law as it now stands, after having been subjected to the important changes made by the present Act.

NOTE.—It is observable that the cases above cited generally turn upon the distinction whether the master or employer is absolutely compellable or not to take a pilot, or to employ a particular person (not merely one of a class from which he may select) or not. The British Pilot Acts generally, but not universally, make it compulsive, under a penalty, upon the master of a ship to take a pilot, and in such cases exempt the master and owner from responsibility for the negligence of the pilot. But, in some cases, the master has an option to employ a pilot or not; and, in case he elects not to employ one, he is by law required to pay the pilotage fee, or a part thereof, to any pilot who

(*d*) 45 Geo. III. c. 12, s. 13.

This case, and the considerations which arise out of it, will show the immense importance and responsibility of

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offers himself, and whose services are declined. In these latter cases, the question has arisen, whether the master and owners are responsible for the negligence of the pilot, if one is taken by the election of the master. The present learned Judge of the High Court of Admiralty (Dr. Lushington) has held, that there is no difference in principle, whether the master or owner is compellable, under a penalty, to take a pilot, and whether he has an election to take or not, but if he declines to take one, then he is to pay pilotage; and he deems the pilotage, so paid, as in the nature of a penalty. But there seems great reason to doubt the correctness of this doctrine. In the first place, the penalty is properly and strictly designed, as a punishment for an offence, in neglecting or refusing to comply with a positive duty imposed by law; and the penalty is in no just sense to be treated as a commutation for liberty to commit the offence, and to omit the duty. In the other case no such positive duty exists, and it is left to the choice of the master to take a pilot or not, according to his own discretion. The taking of the pilot is then a voluntary act, and not a compulsive act. In the next place, the compensation to be paid to the pilot, or the pilotage allowed him, in case of the master's declining to employ him, is not a penalty, or in the nature of a penalty, to compel the party to take a pilot, but is more properly to be treated as a remuneration of the pilot for keeping himself at all times ready to perform the duty of a pilot, when required, and to encourage him to encounter the hazards and perils incident to such a service, and to secure adequate skill and ability for the safety and protection of vessels navigating the coasts and harbours of the country. It is, therefore, a compensation, *pro opere et labore*,

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the office of pilot, and the necessity which exists that the utmost care and attention should be given by the authorities

founded in a sound public policy, to secure protection and prompt assistance, and ready skill, to all persons who may require them in navigation, rather than a punishment for a dereliction of duty. See the ship, *Duke of Sussex*, 1 W. Robins, New Adm. R. 270, 272. In America, certainly, no such doctrine has ever been inculcated; and the owners and masters of ships are held liable for the negligence of pilots in cases where they are not compellable to take them; although, if not taken, half pilotage, or some other proportion of pilotage, is required to be paid to the pilot who offers. *Williamson v. Price*, 16 Martin, R. 399; *Yates v. Brown*, 8 Pick, R. 23. See also the opinion of Sir John Nicholl, in *The Girolamo*, 3 Hagg. Adm. R. 169, 172. Indeed, in the case of *Williamson v. Price*, 16 Martin, R. 399, the Supreme Court of Louisiana went much further, and seems to have held, that even if the taking of a pilot on board was a compulsive duty, and not optional, still the owners were liable for the negligence of the pilot actually employed. See also *Bussy v. Donaldson*, 4 Dall. R. 206, which seems to have adopted the same doctrine. And this seems also to have been the opinion entertained by Lord Stowell, upon general principles; *The Neptune* 2d, 1 Dodson, Adm. R. 467; and by Sir John Nicholl, in *Girolamo*, 3 Hagg. R. 169. But see the able note of Mr. Curtis on this subject, in his work on *Merchant Seamen*, pp. 195, 196, note. Even under the British Pilot Acts, in order to exempt the owner from responsibility, the collision, or other act, occasioning the damage, should be exclusively caused by the negligence, unskilfulness, or misconduct of the pilot alone; for, if it be in part caused by the unskilfulness, misconduct, or negligence of the master or mariners, the owner will still remain liable

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who make the appointment, to see that none are appointed but those who possess the requisite qualifications and character, since it has pleased the legislature to give to those whose property is to be placed under the sole charge of a pilot, no power to select one in whom they have confidence, or to refuse one in whom they have none.

I, therefore, dismiss the owners of the *Lotus* from the present suit, but following the precedents established by Dr. Lushington in the High Court of Admiralty of England, in cases where the damages have been found to proceed from the fault of the pilot alone (*e*), confirmed by the decision of the Privy Council, as delivered by Lord Kingsdown in the case of the *Lochlibo* (*f*), I dismiss the suit without costs.

Jones and Hearn, for promoters.

Holt and Irvine, for defendants.

therefor. The *Protector*, 1 Rob. Adm. R. 45; The *Diana*, 1 W. Rob. New. Adm. R. 131; *Smith v. Cowdry*, 17 Peter's R. 20, S.C.; 1 Howard's Sup. Ct. R. 28.

"Story's Commentaries on the Law of Agency," 6th edition (1863), edited by Edward Hastings Bennett, § 456 *a*, p. 753, *in note*.

(*e*) The *Maria*, 1 W. Rob. 111; *ibid.* 465.
 The *Agricola*, 2 W. Rob. 21; (*f*) *Pollok v. McAlpine*, 7
 The *George*, *ibid.* 390; The Moore's P. C. Rep. 435; The
 Atlas, *ibid.* 506; The Admiral Temora, 1 Lush. 23; *ibid.* 313.
 Boxer, Swabey, 197; The *Argo*,

Monday, 2nd June, 1862.

ARABIAN—SIMARD.

ALMA—BRODIE.

The meaning of the Act respecting the navigation of Canadian waters is, that whenever two vessels are seen from each other, even in parallel courses, provided they are close to each other, or in any course so that there is reasonable probability of a collision, it is their duty, unless there be some impediment, to obey the law.

Where a steamer, coming down the river St. Lawrence, upon a dark night, meets a sailing vessel, and those in charge of the steamer are in doubt what course the sailing vessel is upon, it is their duty to ease her engine and slacken her speed, until they ascertain the course of the sailing vessel.

The rule of the Admiralty Court, that in case of mutual blame the damage was to be divided, is superseded by sec. 12 of the Act respecting the navigation of Canadian waters; and the penalty on a party neglecting the rules enjoined by sec. 8 of that statute is to prevent the owner of one vessel recovering damages from the other, also in fault.

JUDGMENT.—*Hon. Henry Black.*

ARABIAN,
ALMA.

Two suits have been brought, both arising out of a collision which took place in the River St. Lawrence in the early morning of the 3rd day of July last, between the barque Alma and the steamer Arabian, the one by Charles Dunn and Charles William Dunn, of Newcastle, both owners of the barque against the steamer, and the other by William M. Gorrie, of Toronto, John M. Laudor, of Niagara, and William McGivern, of St. Catherines, in Upper Canada, as owners of the steamer against the barque. The barque, of the burthen of 503 tons, was on a voyage from Liverpool to Quebec; and the steamer, of the burthen of 234 tons, was on a voyage from Quebec to Shediac, in New Brunswick. The barque was in ballast

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and the steamer had a cargo of flour, and a number of cabin and steerage passengers on board. About one in the morning of the 3rd of July, the two vessels were in the River St. Lawrence, six or seven miles below the Traverse. The tide was ebbing, and the wind about north-east or east-north-east. The night was dark. The steamer was running in the usual channel and on her usual course, heading east and by north-half-east. The barque was running before the wind on a course west-south-west. The two vessels were thus running in opposite directions. The witnesses for the steamer say that the wind was strong, while those for the barque say that it was fresh or moderate. Those for the steamer say that the night was obscure, there being a mist or slight rain; but admit that it was not sufficiently so to require them to steer by the compass; and say that they could see the land on both sides, the river being at that place, as they say, twenty-one miles wide. The witnesses for the barque say that the night was dark but clear. The steamer was going with the tide, and, according to the evidence of the master, at the rate of eleven miles over the ground, but the mate says she was going about fifteen. The barque was going at five knots, according to the evidence of her master. The two vessels were thus approaching one another at the rate of not less than fifteen miles an hour. The collision occurred shortly afterwards, the steamer's port paddle box coming in contact with the barque's starboard bow, and occasioning the damage complained of on each side respectively. The steamer had undoubtedly the lights required by law,—a bright light at the mast head, a green light on her starboard side, and a red light on her port side. The steamer's people assert that they saw only a white light on board the barque; but the barque's people (the master, carpenter, acting as mate, and seven of the crew), all swear positively that she had a green light on her starboard side, and a red light on her port side; and I

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see no reason to doubt the truth of their statement as to a fact which must have been within their personal knowledge.

The statement on behalf of the barque is, that when her people first saw the steamer, they saw her white light about two points on her starboard bow, from one to two miles off; and that two or three minutes afterwards they saw the steamer's green light, which appeared almost immediately under the white light, both on the starboard bow of the barque. The barque was then in charge of a branch pilot, Celestin St. Pierre, who gave orders to the man at the wheel to starboard the helm, so as to alter the barque's course about one point, to give the steamer a wide berth, which was done. That the steamer continued her course until she got nearly abreast of the barque, and was about three ships' lengths from the barque—and would have easily gone clear of her—when she suddenly turned round, putting her helm hard-a-port, and crossing the barque's course; and that almost immediately afterwards the steamer came into collision with the barque, the fore part of her port paddle box coming into contact with the barque about twelve feet abaft the starboard bow, and that in going ahead she caught the barque's cut-water, and knocked it over to port, her funnel getting foul of the barque's jib-boom, which it broke with the anchor stock, cathead and some planks. That the steamer then let off her steam, and backed off a minute or two after striking.

On the part of the steamer it is stated in evidence, that at the time the light of the barque was first seen, there were only two men on deck, the mate and the man at the wheel, the master being in his cabin, which was close to the wheel-house. That on seeing the barque's light the mate asked the wheelsman whether he also saw it, when he said he did, and the mate told him to port his helm, which was immediately done. That the barque's

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light, when first seen, was a little to the right or starboard of the steamer, but very little. That they saw only one white light, and nothing else; and that the light appeared to come straight up the river, while the steamer was going straight down. That the light appeared a little less than a mile from the steamer. That when the helm was put to port, the barque's light appeared to go to the north or port side. That the mate, fearing, lest the new course should take them too far towards the south side, ran in to call the master, who came out immediately and said, on seeing the barque, "She is going to cut us in two," and ordered the helm to be put hard-a-port, which was done, the mate helping the wheelsman. The mate says the barque then appeared to be rather less than half a mile from the steamer, and on the port side. That the steamer was then running across the river towards the south, six or seven points out of her course. That after they saw the barque's light she seemed to change her course, as if she had starboarded her helm instead of porting it. That the barque struck the steamer on the port side before the wheel-house, carrying away her chimney, and doing her other serious injury.

There can be no doubt that when the vessels saw each other's lights, the barque starboarded her helm, and the steamer first ported her helm, and soon afterwards put it hard-a-port; and it would seem that if, instead of doing so, both had kept their course, there would have been no collision. For the people of the barque swear positively that they saw only the white and the green light of the steamer, and that the latter was two points on their starboard bow; while the steamer's people certainly saw but one of the barque's lights, which must have been the green one, and it was the barque's starboard bow which came in contact with the steamer; and the mate, the only look-out man on board the steamer, says that when he first saw the barque's light it was a little on the starboard hand. But though it seems most probable that if both

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vessels had continued their course they could have passed each other safely, yet the very act of the pilot of the barque in shifting her helm for the purpose of giving the steamer a wide berth, shows that he thought there was at least some danger of a collision if the vessels continued their courses. Now, section 8 of the Act respecting the navigation of Canadian waters (a), which is taken *verbatim* from "The Merchant Shipping Act, 1854" (b), provides that "Whenever any vessel, whether a steam or sailing vessel, proceeding in one direction, meets another vessel, whether a steam or sailing vessel, proceeding in another direction, so that if both vessels were to continue their respective courses they would pass so near as to involve any risk of collision, the helms of both vessels shall be put to port so as to pass on the port side of each other; and this rule shall be obeyed by all steam vessels, and by all sailing vessels, whether on the port or starboard tack, and whether close-hauled or not; unless the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to the proviso that due regard shall be had to the dangers of navigation, and as regards sailing vessels on the starboard tack close-hauled, to the keeping such vessels under command." In this case the two vessels were in fact meeting each other, or approaching each other, in nearly opposite parallel courses; and, therefore, if the pilot of the barque thought there was any such risk of collision, as required that he should in any way change his course to avoid such risk, then it was his duty to obey the rule, and port his helm, so as to pass on the port side of the steamer. There is no doubt if both had starboarded their helms, they would have gone clear; and it seems probable that they would have done so, if both had kept their courses, or if, when the barque starboarded her helm, the steamer had

(a) Consolidated Statutes of
Canada, c. 41.

(b) 17 & 18 Vict. c. 104,
s. 296.

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kept her course. But the pilot of the barque having decided that there was risk of collision, and having determined to alter her course, had clearly but one course to pursue, and that was to obey the law and port his helm. He had no right to suppose that the steamer would not also obey the law; and if he obeyed it, it was clear that his starboarding the barque's helm would not avoid the risk, but would probably increase it. The object of the law is to establish a rule by which each vessel, in circumstances like those in which the barque and the steamer were placed, may know what course to take, and what the other vessel is bound to do. A contrary rule that each vessel should starboard her helm, under such circumstances, might have been as good; but it was necessary that some simple, practical, and certain rule should be laid down and followed, and this the law has done; and it is only by strict obedience to this rule that the danger to life and property from collision can be avoided. The two vessels in question were undoubtedly "meeting each other" within the meaning of the law, as construed in all the cases in point which have come before the English Courts; and the pilot of the barque, having decided that there was risk of collision if he continued his course, and having determined to alter it, was bound to do so by porting his helm. He disobeyed the law, and starboarded it,—thereby increasing the risk of collision, if he did not absolutely cause that which occurred. In the case of the *Cleopatra* and the *Simla*, Dr. Lushington expressly says:—"According to my view of the Statute, whenever two vessels are seen from each other, even in parallel courses, provided they are close to each other, or in any course so that there is reasonable probability of collision, it is their duty, unless there be some impediment, to obey the provision of the statute (c). In that case the courses of the

(c) The *Cleopatra*, Swabey's of The *Inga*, Stuart's L. C. Ad. Rep. 135. See also the case R. p. 335.

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two vessels were opposite ; and in that, as in this case, the one vessel, the *Cleopatra*, saw the white and green lights of the *Simla* at least two points on her starboard bow, at a distance of at least two miles ; she starboarded her helm while the *Simla* ported hers, and so approached ; eventually, but too late, she ported her helm : Dr. Lushington considered her solely to blame and condemned her in damages. He said "that if instead of being two points on the starboard bow, the other vessel had appeared to be five or six points on the starboard bow, then they might not be considered as *meeting* each other, but as *crossing*, and that different considerations would apply." There may be cases where, to avoid immediate danger, it may be necessary to starboard the helm, but in the present case it cannot be, nor is it pretended that there was any necessity for starboarding the barque's helm in order to avoid immediate danger ; and if she changed her course at all it should have been by obeying the law, and putting her helm to port. The barque, therefore, was by her own evidence in fault.

Then, as respects the steamer, according to the evidence on her side, it appears that the night was dark with drizzling rain, and yet that she had on deck only one hand (the mate) besides the man at the wheel ; and that after she had seen the barque's light nearly ahead, at a distance of a mile, and had ported her helm, no order was given to stop or to ease the engine ; although it is proved on her side that she was going with the tide, and according to the evidence of the mate, at a rate of fifteen miles an hour. The witnesses on her side also state that they saw only one light of the barque, and they therefore could not say which side of the barque was towards them, or on which she was steering. The witnesses do not even seem certain on which side of the steamer the barque's light was ; the mate (the only look-out) says he thinks it was on the starboard hand, while the wheelsman says it was on

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the port. Seeing but one of the barque's lights, the steamer's people could not tell which way she was steering; but the wind was fresh from the eastward, and they saw that she was approaching, and must have known, or ought to have known, that she must be coming up at considerable speed, in fact that the two vessels must be approaching each other at a rate of nearly twenty miles an hour. Under these circumstances, it was the undoubted duty of the steamer to stop, or at any rate to ease her engine; but she did not do so, nor was any order given to that effect until after the collision. It is the duty and practice of steamers, when the look-out sees a vessel ahead, and it is uncertain which way she is standing, to stop the engine and back; and it is not usual or proper to change her course, before the course which the other vessel is steering has been ascertained. It would evidently be unwise to change her course until the course of the approaching vessel was ascertained; she might be approaching at an angle which would clear the steamer, and a change in the course of the latter might produce a collision, instead of preventing it; and stopping the engine would lessen the rapidity with which the vessels were nearing each other, and gain time to ascertain the distance and course of the approaching vessel. A steamer possesses a power which a sailing vessel does not, that of at once stopping her way, or even backing, and giving time to both; and if the Arabian had exercised this power, as she ought to have done, there can be little doubt that she would have prevented the collision. It is at least manifest that her not stopping but continuing at full speed exposed both vessels to imminent and great danger. Had she stopped or eased her engine in time, there would have been no occasion for the sudden and hurried command to put her helm hard-a-port, which seems to have been the final cause of the collision. It may, as Dr. Lushington remarked in the case of the *Rose* (d), be convenient that steamers should

(d) 2 W. Robinson's R. p. 3.

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proceed with as much speed as possible, but they must not do so at the risk of the lives and property of Her Majesty's subjects. It appears to me, therefore, that the inconsiderate order of the mate, to port the helm before he had ascertained the direction in which the barque was steering, instead of stopping or easing the engine, was one of the causes of the collision ; and that the hurried order of the master to put the helm hard-a-port, while he allowed the steamer to go at full speed, was another. Even at the time he gave that order, it seems that there would have been time to prevent the accident by stopping or checking the steamer's way, without touching the helm. And if we take the evidence of the people of the barque, with respect to the kind and condition of the lights, to be true, which I see no reason to doubt, it seems also that the steamer ought, by keeping a better look-out, to have distinguished the barque's green light, and to have known how she was steering. I think, therefore, that although the barque was in fault in starboarding her helm, the steamer was also in fault in not stopping or easing her engine, and in porting her helm before ascertaining the course of the other vessel ; and that the collision was the consequence of the misconduct or error of both.

In these remarks no notice is taken of the space of time, which is alleged on either side to have elapsed, from the time when each vessel saw the other's lights to the collision. Both parties evidently overrate it. They estimate it at about twenty minutes, when in reality the vessels were, according to the evidence, approaching each other at the rate of about twenty miles an hour, or a mile in three minutes ; and supposing them to be correct in estimating the distance at which they first saw each other at about a mile, the space of time which elapsed from that time to the collision could not really have exceeded three or four minutes. This, perhaps, accounts in some measure for the hurry and want of due consideration which appear to have prevailed on board the steamer. It is well known

that under exciting circumstances persons have no correct knowledge of the passing time; and that what really occupies a very short space, appears to them to be of long duration. Many and very striking cases might be cited to exemplify this.

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Both vessels being in fault, the former law of the Court of Admiralty would have divided the damages equally between them, but by the Act now in force respecting the navigation of Canadian waters (22 Vict. c. 19, ss. 8 and 12), which agrees exactly with sect. 296 and 298 of the British Merchant Shipping Act, the owners of the barque, which contravened the eighth section of the Act, are precluded from recovering any portion of the damage from the owners of the steamer. This is the construction put upon the British Act by the Judicial Committee and the Lords of the Privy Council in the case of the *James*, in 1856 (*e*), and is of course the only construction to be put upon the corresponding enactment of the Canadian Legislature. And the barque being at the time of the collision in charge of a licensed pilot,—compulsorily taken on board and put in charge,—and her manœuvres having been directed by him, her owners would not be liable, even if the fault had been solely with her (*f*). Both actions must, therefore, be dismissed, but without giving costs on either side.

Jones and Hearn, for Alma.

Vannovous, for Arabian.

(*e*) 10 Moore's P. O. Rep. 162.

(*f*) *The Lotus*, *supra*, p. 58.

Tuesday, the 22nd July, 1862.

ROYAL MIDDY—DAVISON.

Upon a value of £6,700, the sum of £400 awarded as salvage to a schooner, for towing a vessel disabled in her masts and rigging, in the lower part of the St. Lawrence, to a place of safety; the mere *quantum* of service performed not being the criterion for a salvage remuneration.

ROYAL MIDDY

This was a claim of salvage, by Joseph Roy dit Desjardins, the owner and master of the schooner Emedine, against the three masted schooner Royal Middy and her cargo, under the circumstances mentioned in the following judgment of the Court:—

JUDGMENT.—*Hon. Henry Black.*

The Royal Middy, of the burden of 404 tons or thereabouts, owned by William Duthie Baxter Janes of Montreal, and commanded by Robert Davison, sailed from Montreal for Dublin, in Ireland, on the 23rd October last, with a cargo of Indian corn. Between the 2nd and the 9th of November, being then in the lower part of the River St. Lawrence, she met with strong gales and head winds, and shipped several heavy seas,—losing her foremast, main topmast, and jib-boom, and other spars, having her rigging a good deal torn and shattered, and being thereby disabled and unmanageable,—and found herself, on the 6th of November, off the west point of the island of Anticosti, which bore north-east by north, about ten miles from her. A jury-mast was then rigged, and she stood to the southward, and on the 7th was anchored about three-fourths of a mile from the south shore. On the 8th, about one in the forenoon, the master, his wife, the

second mate, and two seamen, went ashore in the ship's boat, taking with them the best of the master's baggage. The vessel was then so close to the land, that the witnesses say if it had come on to blow, she must have gone ashore on the rocks. The master and the men endeavoured to return through the surf to the vessel, but could not accomplish it; the men, after being twice washed ashore, refusing to try any more. On the 9th, at about two or three o'clock, A.M., the wind having come off the land, the mate, who was left on board, proposed to the remainder of the crew to try and save the ship and cargo. The men agreed, and the starboard anchor was raised, and the port one slipped, and they succeeded in getting out to sea. As the day advanced the weather became worse than it had been since their departure from Quebec. It blew hard, and the vessel became quite unmanageable, the sea beat over her constantly, she made a great deal of water, and the men, who could scarcely leave the pumps, expected she would go down every moment. Being about twenty miles from the south shore, with a signal of distress flying, a vessel passed and was applied to for assistance to tow the Royal Middy to some safe anchorage, but she declined as being herself in a bad state, but offered to take the men, which they declined. Soon afterwards they saw, about nine miles to leeward, the Emedine, which answered their signal of distress, and came to them after tacking several times, the wind being then strong, and the Emedine having two reefs in her sails.

The Emedine is a schooner of ninety-six tons burden, and had sailed on the 1st of November from Halifax, Nova Scotia, for Quebec and Montreal, with about 400 barrels of herring and mackerel, of the value of about £800. Her crew consisted of a master, mate, and four seamen. She was abreast of Cape Rosier when she met the Royal Middy. After several tacks she came within a short distance of the Royal Middy, and spoke

ROYAL MIDDY. her, asking her people what assistance they required, and were answered that they wanted the Emedine to tow the Royal Middy to a safe anchorage. As the people of the Royal Middy could not come on board the Emedine on account of there being no oars to their boat, the master of the Emedine went on board of the Royal Middy, and encountered some danger in so doing, in consequence of the state of the weather and the sea, which was then sweeping over the Royal Middy's deck. The promoter (the master and owner of the Emedine) went into the cabin of the Royal Middy with the mate, who was then in charge, and who asked him what he would charge to tow the Royal Middy to a safe anchorage: to which the promoter answered that his vessel was not insured; that by assisting the Royal Middy to a safe anchorage he might lose his vessel, or be compelled to discontinue his voyage to Quebec; that he had a cargo on board, and that the delay might expose him to damages towards the owners of the cargo. It was finally settled that the Emedine should take the Royal Middy in tow, and endeavour to take her to a safe anchorage; but no price was agreed on, the master of the Emedine saying that he would claim whatever the law would allow him. The promoter then returned to the Emedine, and as the Royal Middy had no proper hawser—her's being used for the jury-mast—he sent one from the Emedine, and at the same time sent a pair of oars; and having made the hawser fast on board the Royal Middy, at about half-past seven o'clock, P.M., of the 9th, all things being made ready, he steered towards Cape Rosier light, towing the Royal Middy after him. They had considerable trouble: during the night the weather was rough, and it snowed heavily on the following morning, so that though close to the land, it could not be seen, and the lead was constantly used; and the wind changing, they were compelled to come to anchor about two or three o'clock, P.M. of the 10th, at a place called Sandy Beach, at the entrance

of Gaspé Basin, where they remained until about two o'clock, P.M., of the 11th, when the wind having shifted they entered Gaspé Basin, and came to anchor in six or seven fathoms water, between seven and eight o'clock in the evening, about a cable's length from the wharf at which the Royal Middy wintered. The weather became worse afterwards, and the frost set in, so that the Emedine was compelled to remain in Gaspé Basin, and to winter there, it being impossible to continue her voyage to Quebec without risking the total loss of the vessel and cargo. The promoter was afterwards sued by the owner of the cargo for \$5,000, as damages alleged to have been sustained in consequence of his having failed to bring the cargo to Quebec in the Autumn. It was not until the 13th or 14th of November, that the master of the Royal Middy joined that vessel in Gaspé Basin, having proceeded to that place over land from the point at which he, with his wife, second mate, and two seamen, had landed.

It is admitted on behalf of the Royal Middy, that the services rendered by the Emedine were salvage services, the vessel being then damaged and in distress; but it is alleged that the services were rendered without any interruption of her voyage, or while she was actually on her way to the port to which she towed the Royal Middy, and to which it is alleged she was proceeding for safety, having sprung a leak through bad weather, and feeling unable to continue her voyage to Quebec; that the service involved neither enterprise nor danger to the Emedine or her crew; and that the Royal Middy was not in imminent danger when taken in tow by the Emedine, but was proceeding towards and near a safe port; that no skill or labour was exerted by the people of the Emedine, and that the time occupied in the service performed was very short. But the assertion that the Emedine was about to proceed to Gaspé Basin, or that the promoter had any thought or intention of discontinuing his voyage to

ROYAL MIDDY. Quebec is not proved in any way, and is positively denied by him ; although he admits that being above the harbour of Malbaie, and fearing boisterous weather, he intended to go and anchor for the night in that place. The risk of the lives of the crew of the Emedine, or of the loss of that vessel herself, was probably not very great, but the risk of detention, and of the loss of the voyage, was certainly very considerable at the time the service was undertaken ; and this loss was eventually incurred, the Emedine having been obliged to winter in Gaspé Basin. The degree of danger and distress from which the Royal Middy was rescued was undoubtedly very great. She was disabled in her masts and rigging, very leaky, without oars for her remaining boat, and deprived of her master, second mate, and two of the seamen, forming probably a considerable portion of her crew. From this danger she was rescued by the Emedine. The value of the property thus saved is admitted to have been £6,700 currency ; that is £3,000, as the value of the vessel, and £3,700 as that of the cargo. The principle upon which salvage is awarded is that the remuneration should be liberal, looking not merely to the exact *quantum* of service performed in the particular case, but to the general interests of navigation and commerce, which are obviously greatly protected by encouraging exertions of this nature. If in this case I award £400 currency to the Emedine, this will be about six per cent. on the value of the Royal Middy and cargo, which in my judgment will be a fair and liberal remuneration for the services rendered, and I award that sum, with expenses.

Caron, Jones, and Hearn, for Salvor.

Holt and Irvine, for Royal Middy.

11th August, 1862.

JAMES McKENZIE—BOUILLÉ.

Rule of navigation with regard to steam vessels approaching each other on different courses.

A steamer going up the St. Lawrence at night, on a voyage from Quebec to Montreal, saw the light of another steamer coming down the river, distant about two miles; and when at the distance of rather more than half a mile took a diagonal course across the river in order to gain the south channel, starboarding her helm, and then putting it hard to starboard. The steamer coming down having ported her helm on seeing the other, a collision ensued.

Held:—That the vessels were meeting each other within the meaning of the Act regulating the navigation of the waters of Canada (22 Vict. c. 19), and the steamer going up the river was solely to blame for the collision in not having ported her helm.

This was a cause of damage brought by Pierre Plante, the owner of the steamer *Fashion*, against the steamer James McKenzie, to obtain compensation for a loss arising from a collision between these two vessels in the river St. Lawrence, about three quarters of a mile above Lavaltrie island.

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McKENZIE.

JUDGMENT.—*Hon. Henry Black, C. B.*

On the 27th of June, 1861, the steamer *Fashion* of 200 tons burthen and about forty-five horse power, owned by and in charge of Pierre Plante the promoter as master, left Montreal at about nine o'clock in the evening, without cargo, and drawing about five or six feet of water; having on board Joseph Paquin, a branch pilot for and above the harbour of Quebec, as pilot, and having the lights prescribed by law in the position which the act requires. In the prosecution of her voyage to Quebec, she

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passed down the north channel, between the Verchères Islands and the north shore as far as the eastern end of those islands. She then took the main channel and the proper course for that purpose. At this point the north channel and the south channel, or that on the south side of the Verchères Islands, merge into one, and they together form one channel of about three quarters of a mile in width for vessels such as those concerned in the present case. At the same time the James McKenzie, a steamer of about 400 tons, and about one hundred and twenty horse power, and having in tow a barge, partly loaded, so as to draw between nine and ten feet water, was proceeding on her voyage from Quebec to Montreal; having a pilot on board, and proper lights in the position required by law, on board the steamer and her tow. It was then between eleven o'clock and midnight: the night was cloudy, but the lights of vessels could be easily distinguished, according to the statements in the pleadings and evidence, at the distance of from one to two miles. The James McKenzie intending to take the south channel shaped her course accordingly for it, the Fashion keeping towards the south. In this position the vessels saw each other: the people of the James McKenzie say they saw the Fashion at the distance of about two miles, and that when the distance between the vessels was rather more than half a mile, the Fashion appearing to them to be proceeding in a direct course down the river, the James McKenzie took a diagonal course across the river in order to gain the south channel, which is said to be safer and better, star-boarding her helm for that purpose. The Fashion on seeing the James McKenzie ported her helm, in order to pass the James McKenzie on the port side, and to the right hand side of the middle of the channel, as the law requires in such cases; and as she approached the James McKenzie, the Fashion put her helm hard-a-port in order more effectually to avoid her. The James McKenzie on

the other hand kept her helm to starboard, and afterwards put it hard-a-starboard. Both vessels appear to have stopped their engines, but too late. The James McKenzie struck the Fashion on the port side about forty feet from the stem, doing her great damage, and sinking her in about four fathoms of water.

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The two vessels were undoubtedly meeting each other within the meaning of the Act regulating the navigation of Canadian Waters (a), and that Act expressly says, "Whenever any vessel, whether a steam or sailing vessel, proceeding in one direction, meets another vessel, whether a steam or sailing vessel, proceeding in another direction, so that if both vessels were to continue their respective courses they would pass so near as to involve any risk of a collision, the helms of both vessels shall be put to port so as to pass on the port side of each other; and this rule shall be obeyed by all steam vessels, and by all sailing vessels,—whether on the port or starboard tack, and whether close hauled or not,—unless the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to the proviso that due regard shall be had to the dangers of navigation, and as regards sailing vessels on the starboard tack close-hauled, to the keeping such vessel under command" (b). And that, "Every steam vessel, when navigating any narrow channel, shall, whenever it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such steam vessel" (c). And also that, "If any damage to person or property arises from the non-observance by any vessel of any of the foregoing rules, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such vessel at the time; unless the contrary be proved, or it be shewn to the

(a) 22 Vict. c. 19.

(c) Sec. 9.

(b) Sec. 8.

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satisfaction of the Court, that the circumstances of the case made a departure from the rule necessary; and the owner of the vessel in all civil proceedings and the master or person in charge, in all proceedings, civil or criminal, shall be subject to the legal consequences of such default" (d). The *Fashion* obeyed the law by porting her helm, and taking the proper side of the channel; and if the *James McKenzie* had done the same, the collision would certainly have been avoided. By her own statement, the *James McKenzie* was crossing the course of the *Fashion*, which vessel was where she had a right to be; and though it is probable the *James McKenzie* believed she could pass safely by taking the course she adopted, yet as this course was not that required by law, she adopted it at her peril, and is responsible for the damage which resulted from its adoption. There was no absolute necessity even for her taking the south channel at all, there being water enough in the north; or, she might have stopped until the *Fashion* had got into such a position that there could have been no possible risk of collision, by the *James McKenzie's* crossing her course in order to take the south channel; but she did not choose to do so, and preferred taking the risk which led to the collision. She did this without necessity, for there was nothing whatever in the circumstances to render a departure from the rule necessary in order to avoid immediate danger. I must therefore pronounce for the damage, and refer the amount to the registrar and merchants for their report (e).

Jones and Hearn for *Fashion*.

Holt and Irvine for *James McKenzie*.

(d) Sec. 13.

Rob. 274; *The Sylph*, 2 Spinks,

(e) *The Duke of Sussex*, 1 W.

Ecc. & Adm. Rep. 75.

21st November, 1862.

COURIER—WYATT.

A vessel having the wind free is bound to take proper means to get out of the way of a vessel close hauled.

The owners of a vessel having a branch pilot on board are only exempt from liability for damage where the damage is caused, exclusively, by the negligence or unskilfulness of the pilot.

When a pilot is on board the ship he must be actually on deck and in charge, to relieve the owners of their responsibility.

In case of collision, arising from negligence or unskilfulness in management of ship doing the injury, pilot not an incompetent witness for such ship.

JUDGMENT.—*Hon. Henry Black.*

COURIER.

This suit is brought by John Snowdon and Henry Havelock Lee of South Shields, in England, owners of the ship John Moore, Joshua Taylor Binden, master, of the burthen of 681 tons, against the ship Courier, William Wyatt, master, and owned by Henry Fernie, James Fernie and David Fernie of Liverpool, in England, of the burthen of 1025 tons, to recover damages alleged to have been occasioned by a collision between the two vessels, a little after midnight between the 8th and 9th August last, in the river St. Lawrence, between Basque Island and Bic Island. The John Moore was bound to London with a cargo of timber; and was beating down the river, close hauled on the star-board tack, with the wind light from the north-east; and was going about three knots an hour. The Courier was bound from Nassau to Quebec in ballast, and was running up the river before the wind, at about three knots per hour. The tide was running up. Both vessels had their lights required by law brightly burning, and placed in the proper position; and each had a branch pilot on board.

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The Courier had taken her pilot, George Laplante, off Father Point. About ten o'clock on the evening of the eighth, the captain and the pilot went below: the latter being tired went to lie down on the sofa in the captain's cabin: it was then the mate's watch. At midnight the watch was changed, and the second mate took charge of the vessel with eight or nine men. Neither the captain nor the pilot then came on deck, both being asleep in the cabin, it was then the captain's watch. The pilot says, that about one o'clock he was awoke by a shock, accompanied by considerable noise, and ran immediately on deck, where he found the bowsprit of the Courier had passed abaft the mainmast of the John Moore at right angles, and that the Courier had struck the John Moore nearly amidships. The captain of the Courier also came on deck when he felt the shock of the collision, and found the vessels in the position above described. All these facts are undisputed. The evidence on the part of the John Moore establishes that her pilot, and a sufficient number of men were on deck, at the time of the collision and for some time before it; that they saw the Courier at the distance of three quarters of a mile on the John Moore's starboard bow; that they kept a good look out keeping their course as they had a right to do, being close hauled, until the other vessel came into contact with them; that as soon as the Courier came within hailing distance, the pilot of the John Moore hailed the Courier to starboard her helm, and pass under the stern of the John Moore; and that if she had done so at the time she was hailed, the collision would have been avoided; but that she did not do so, and the collision was occasioned by her neglect.

No fault of seamanship is imputed by the Courier's people to the John Moore, but their defence rests on the allegation that the accident was occasioned by the fog which had settled upon the water, and by the neglect on

the part of the John Moore to have sufficiently powerful lights, so that she could be discerned at a distance; and that the Courier was under the sole and exclusive care of a branch pilot, taken on board in pursuance of the requirements of the law, and that she was not in charge of the master or of any person employed or engaged by him, or by the owners (a). As respects the lights on board the John Moore, there is abundant proof that they were sufficiently powerful and properly placed; and as respects the fog, the evidence not only of all the people of that vessel, but also of the pilots of other vessels, which were within sight of the John Moore and the Courier at the time of the collision (one of these pilots being a witness called on behalf of the Courier), and of the people of the Courier themselves, proves beyond a doubt that the night was fine and moonlight, and the weather clear; and it seems to admit of no reasonable doubt that if a proper look out had been kept on board the Courier, and the proper course adopted when the vessels came in sight of each other, no collision would have taken place: it was certainly not occasioned by inevitable accident. Unless then the owners of the Courier are relieved from her responsibility by the mere fact of her having a branch pilot on board, they must be answerable for the damages occasioned by the collision in question.

It has been held in this Court that where the taking of the pilot was compulsory, and the accident was occasioned solely by his neglect, default, incompetency, or incapacity, the owners were not liable (b), but the mere fact of there

(a) No owner or master of any ship shall be answerable to any person whatsoever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any place where the employment of such pilot is compulsory by law. St. 27 & 28 Vict. c. 13, s. 14 of Legislature of Canada, and corresponding enactment in the Merchant Shipping Act, 1854. (17 & 18 Vict. c. 104, s. 388.)

(b) The Lotus, 19th July, 1861.

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being a pilot on board does not discharge the master, officers, or crew of the vessel, who are the servants of the owners, from their duty or their obligation to do all in their power for the safety and proper navigation of the vessel: it certainly does not discharge them from the obligation to keep a good look out, and observe the ordinary rules of navigation. When the pilot left the deck, he ceased to be in charge of the Courier; and it became the duty of the officer and crew, having the watch and conducting the navigation of the ship, to take charge of her, and to see that a proper look out was kept, and the precautions required by good seamanship observed (c). It must be supposed that the pilot left the ship in charge of the ship's officers, because he knew that the ordinary precautions would be sufficient, and that there were no difficulties of navigation which would render the exercise of his peculiar knowledge necessary, and that they might proceed as if he were not on board. Dr. Lushington, in a similar case, observes: "That from the time the pilot went below, he was no longer in charge of the vessel, but most distinctly the officer in charge of her was the second mate, who was on deck conducting the navigation of the ship" (d). And the opinions of the most eminent jurists in England are to the same effect (e). In order that the collision should be occasioned solely by the fault, incapacity, or incompetency of the pilot, it must be shewn to

(c) *The Diana*, 1 W. Rob. 131; S. C., 4 Moore's P. C. Cases, 11; *The Christiana*, 7 Notes of Cases 2, S. C., 7 Moore's P. C. Cases, 167; *The Locklibo*, 3 W. Rob. 310; S. C., 7 Moore's P. C. Cases, 427; *The Batavia*, Spink's Ecc. & Ad. R. 378; S. C., 9 Moore's P. C. Cases, 286; *The Mobile*, Swabey's Ad. R. 69; S. C., 10 Moore's P. C. Cases, 467; *The Schwalbe*,

14 Moore's P. C. Cases, 241; *The Malvina*, 1 Moore's P. C. Cases (N. S.), 357; *The Iona*, 4 Moore's P. C. Cases (N. S.), 336.

(d) *The Mobile*, Swabey's Ad. R. 71.

(e) Lord Brougham, Lord Chelmsford, Lord Wensleydale, Lord Kingsdown, Dr. Lushington, and Sir John Patteson.

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have been occasioned by some order given by him, or by some neglect on his part to give the proper order, when he was actually taking charge of and directing the working of the ship (*f*).

A question was raised upon an exceptive allegation given in by the owners of the John Moore, against the admissibility of the evidence of George Laplante, the pilot of the Courier, on the ground that he was an interested witness, as being responsible to his employers for what had occurred while he was the pilot of the vessel. Laplante's evidence does not make any material difference in the facts of the case, or affect the result. But inasmuch as at one time the practice of the Court was to exclude the evidence of pilots and masters of vessels concerned in cases of collision (*g*), it seems right to add that the change made is founded upon an alteration in the English law of Evidence, and the practice of the High Court of Admiralty, in this respect, by Lord Denman's Act, 6 & 7 Vict. c. 85, and Lord Brougham's Act, 14 & 15 Vict. c. 99, which make the evidence of interested persons admissible, leav-

(*f*) If parties be not compelled to take a pilot, there is no ground whatever for saying that the owners are exempt from the ordinary liability which attaches upon them for the negligence of their servants. The Peerless, 13 Moore's P. C. R. 484, 11th and 18th July, 1860. In order to entitle the owner of a ship, having, by compulsion of law, a pilot on board, to the benefit of the exemption contained in the Merchant Shipping Act (17 & 18 Vict. c. 104, s. 388), from liability for damage by default of the pilot, it is not enough to prove that there was fault or negligence on the pilot's part;

but the owner must show that there was no fault on the part of the master and crew, which might have in any degree been conducive to the damage. Where, therefore, there was neglect on the part of the master and crew to keep a good look-out, and such neglect conduced to a collision, the owners were held liable for the damage. The duty of the pilot is to attend to the navigation of the ship, and the master and men to keep a good look-out. The Iona, 4 Moore's P. C. Cases, 336 (N. S.).

(*g*) The Lord John Russell, Stuart's L. O. Vice-Ad. R. 190; The Mary Campbell, *ibid*. 222.

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ing the question of credibility to the discretion of the tribunal before which the evidence is given. The rules of evidence must of necessity be the same in the Vice Admiralty Courts as in the High Court of Admiralty.

For the reasons I have stated, my decree must be against the owners of the *Courier*, with costs.

Edward Jones and Matthew Aylward Hearn, for the owners of the *John Moore*.

Charles G. Holt and George Irvine, for the owners of the *Courier*.

Friday, 20th March, 1863.

WASHINGTON IRVING—DURRANT.

By the general maritime law, as well as under the provisions of the Merchant Shipping Act, desertion from the ship in the course of the voyage is held to be a forfeiture of the antecedent wages earned by the party.

Entry of the desertion in the official log-book deemed sufficient proof, unless the seaman can show, to the satisfaction of the Court, that he had sufficient reasons for leaving the ship.

Costs are not usually decreed in Courts of Admiralty against seamen who are unsuccessful in their suits; a decree for costs would, in most cases, subject the seaman to imprisonment without being productive of any real advantage to the other party.

This case came before the Court upon a reference, made under the authority of the Shipping Act, by the Judge of the Sessions of the Peace of Quebec, before whom the original suit for wages was brought.

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JUDGMENT.—*Hon. Henry Black, C. B.*

This is a suit for wages, brought by the promoter, Alex. McDonald, against the ship Washington Irving, under the following circumstances:—The promoter was shipped and signed articles in the usual form at London, in England, on a voyage thence to Quebec and Montreal, and, if required, to any other place in British North America, and back to the port of final discharge in the United Kingdom, the probable length being stated in the articles at about six months. The ship sailed on the voyage, arrived at Quebec, went to Montreal, took in part of her cargo for her return voyage, came to Quebec and completed it; and sailed for London on the 27th of November last, in tow of a steamer down the St. Lawrence, and came to anchor opposite Crane Island, in the evening of that day.

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The steamer had tried to take the ship through the floating ice, but had failed to do so, and determined leaving the ship at anchor. A breeze sprang up from the eastward, and she returned to Quebec, and anchored off Indian Cove on Sunday, the 30th November. The master came up to Quebec and called upon Mr. Coker, Lloyd's surveyor, who returned with him to the ship, at about two o'clock, P.M., on that day, for the purpose of inspecting her, and ascertaining what damage she had received, by having been chafed by the ice in going down, and whether she was fit to proceed on her voyage to England. Mr. Coker, who was examined in the case, states that, accompanied by the master and Mr. Crawford, one of the agents for the ship, they went round the vessel in a boat, and caused the pumps to be tried twice. He also says he found no serious damage outwards, that she made no water, and that in his opinion she was fit to proceed on her voyage, and should not have returned to port. The master then made an arrangement for the steamer Victoria to come for the ship at five o'clock on the Monday morning to tow her down the river, and ordered the ship to be hove short by three o'clock. The steamer came at five, A.M., but all hands on board, except the master and the mate, having refused to proceed, the steamer was allowed to proceed down the river without the Washington Irving, but taking another ship which succeeded in getting to sea. On the Monday, after the refusal of the men to proceed, the ship was brought over from Indian Cove to Crawford's wharf, in the Lower Town of Quebec, where carpenters were employed until three o'clock on the following morning, in repairing the chafed sheathing. After this, Mr. Coker was again called upon to inspect the ship, and he says, that after having done so he found her perfectly seaworthy, and fit to proceed on her voyage to England. In consequence of the mate's having reported that some of the seamen were still dissatisfied, the men were sent for by the master and

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came aft. All of them, except the promoter and four others, agreed to proceed on the voyage, but the promoter coming forward as spokesman for himself and the four others, refused for himself and them to proceed; and shortly afterwards, without obtaining or asking leave, they came ashore and went to a tavern in the Lower Town. One of the four returned voluntarily. Three others were brought on board by constables, under warrants from the police-office, but the promoter was not to be found. The steamer was alongside to tow the ship down, and the master shipped three new hands, one in lieu of the promoter and two extra hands, and made an entry in the official log-book of the refusal and desertion of the promoter. The vessel sailed at three o'clock in the afternoon, in tow of the steamer, and proceeded as far as L'Islet, about forty miles below Quebec, but was compelled to return by the ice, and was towed back to Indian Cove. The ship lay off Indian Cove until the 4th of December, when she was hauled inside the block. On the morning of the fifth the master saw the promoter on board, who came up to him and asked to be allowed to take away his clothes, but the master treated him as a deserter and refused to have anything to say to him, and ordered him to leave the ship.

The 250th section of the Merchant Shipping Act provides, that whenever a question arises, whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to shew that such seaman or apprentice was duly engaged in, or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall,

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so far as relates to any forfeiture of wages or emoluments, under the provisions therein before contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or *can otherwise shew, to the satisfaction of the Court, that he had sufficient reasons for leaving his ship.* Now, it appears in the present case, that the promoter on two occasions, that is, on the Sunday evening and on the Tuesday morning, declared his intention to refuse to proceed with the ship on her voyage; that on Tuesday, when he knew that the ship was about to sail, he left her and went ashore to a tavern, and remained there until his place had been supplied, and the ship had sailed; and that an entry of the facts was duly made in the official log-book, and it is also clear to me that he has shown to the Court no sufficient reason for leaving the ship, and has, therefore, forfeited his wages under the provisions of the Merchant Shipping Act, as well as under the General Maritime Law. Great indulgence is and ought to be, on ordinary occasions, shewn to seamen who leave their ships, even without leave, for short periods; but if upon the eve of the departure of the ship from a port on her voyage, a seaman should, with a full knowledge of her intended departure, voluntarily and without leave, quit the ship, that of itself would be strong *prima facie* evidence of an intent to desert, and it would require strong evidence of *bona fides* to rebut the presumption; but in this case the promoter left the ship after expressly declaring his intention not to proceed on the voyage. His excuse seems to have been that she wanted further repairs, and that he wished to make complaint to a magistrate; but there is no evidence that he ever went to a magistrate, on the contrary he is proved to have gone to a tavern and remained there; and with respect to the alleged necessity of further repairs, his assertion is completely rebutted by the evidence of Lloyd's surveyor, of the officers of the vessel with whom the responsibility

rested, and in reliance upon whose judgment the remainder of the crew were willing to proceed to sea. I pronounce, therefore, against the claim of the promoter, but as it is not usual to give costs in cases of this nature (a), I make no order in this behalf.

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Alleyn and Alleyn, for promoter.

Jones and Hearn, for owner.

(a) *The Vibilia*, 2 Haggard, 228.

Friday, 4th November, 1864.

LIBERTY—OUELLET.

Of two vessels beating to the windward on opposite tacks, it is the duty of the vessel on the starboard tack to keep her course, and of the vessel on the larboard tack to give way.

In a case of collision between two ships, it is not enough to show that the accident could not be prevented by the party at the moment it occurred, if previous measures could have been adopted to render the occurrence of it less probable.

It is the duty of the person in charge of each ship to render to the other ship such assistance as may be practicable and necessary ; and in case he fail so to do, and no reasonable excuse for such failure be shown, the collision will be deemed to have been caused by his wrongful act, neglect, or default.

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This cause was instituted by the owners of the barque Anne against the ship Liberty to recover compensation for the losses sustained by them arising out of a collision which occurred off Pointe des Monts in the river St. Lawrence in the early part of June last. The circumstances of the case are fully noticed in the following judgment :—

JUDGMENT.—*Hon. Henry Black, C. B.*

This is a suit brought by William Wright, Leonard Wright, and George Wright, of South Shields, in England, owners of the barque Anne of the burthen of 288 tons, and of which Thomas Purdy was master, against the ship Liberty of the burthen of 575 tons, belonging to the port of Montreal, and of which George Shaw and David Shaw are owners, and Zephir Ouellet was master, to recover damages occasioned by a collision of the two vessels, which took place in the river St. Lawrence, off Pointe des Monts, in the night between the 7th and 8th of June last. Both vessels were in ballast and bound from Europe to

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Quebec, and with about fifty others were beating up the river, with the wind, according to the *Anne's* people about west-north-west, and according to those of the *Liberty* west-south-west, making a difference between them of four points; but this difference is immaterial, for it is stated on both sides that the two vessels were upon opposite tacks and close-hauled, and there is no allegation of want of sea room,—the river being there about twenty miles wide,—or of any circumstance to prevent the ordinary rules of navigation from applying. The *Anne* was standing towards the south shore or right bank, and consequently on the starboard tack, and the *Liberty* towards the north shore or left bank, and consequently on the port tack. The wind was a steady breeze, and the weather clear, and it is admitted on both sides that each vessel saw the other, and the other's lights, in sufficient time before the collision, and noticed the direction in which the other was proceeding, and that she was beating to windward close-hauled. Under these circumstances the rules of navigation required the *Liberty* to keep out of the way, by porting her helm and going off the wind immediately on perceiving the possibility of collision, and it was the right and duty of the *Anne* to keep her course (a). This rule ought more especially to be strictly observed at night, when it is difficult to judge of the precise distance of a vessel, and of the direction in which she is proceeding; and it is clear from the evidence that if the rule had been obeyed by both vessels the collision would not have occurred.

The defence rests upon the assertion of the people of the *Liberty* that as soon as the red light of the *Anne* was seen by them at the distance of between half a mile and

(a) *The Shannon*, 2 Hagg. 244; *The Woodpark*, 7 Notes of Cases, 397; *The Lady Anne*, 15 Rob. 189; *The Traveller*, *ibid.*, Jur. 18; *The Mary Bannatyne*, 197; *The Mary Stuart*, *ibid.* Stuart's L. C. Vice-Ad. R. 350.

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a mile the helm of the Liberty was ported, the after sails squared, and the spanker sheet let go ; and that the ship went four or five points off the wind. But they allege that the Anne, instead of keeping her course, kept off the wind, which must mean that she starboarded her helm, and that this brought her close to the Liberty ; and that afterwards when about two cables' length from the Liberty she luffed up, and her port quarter was brought into collision with the port bow of the Liberty ; and that the accident was occasioned solely by her not maintaining her course as she was bound to do.

The evidence of the people of the Liberty, except that of the mate, who was examined in Liverpool, is avowedly founded on their impression or belief as to what must in their opinion have taken place on board the Anne, and against this impression or belief we have the positive assertion of the master, mate, seamen, and hands of the Anne, that she kept her course full and by the wind. The mate of the Liberty, it is true, asserts positively that the Anne altered her course, that she was keeping away when he came on deck, and afterwards luffed up, and that she first starboarded and then ported her helm ; but he says also that he saw no lights on board of her, and could not when he went on deck say which tack she was on. He says that before he went on deck he heard the second mate sing out, "Ship ahoy, where are you coming," which shows that the other ship must have been very near ; and he says that the other ship was at the time he got on deck about a quarter of a mile off, right ahead, or nearly so. He says the Liberty was going about three and a half knots, and the Anne much faster, so that they must have approached each other at a rate not less than seven knots ; and the quarter of a mile which separated them would be passed over at this rate in rather less than two minutes and a half. He also states that from the sail they were carrying it would take the Liberty four minutes to pay

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off from five to seven points, but that they had only paid off about five when the collision occurred ; yet he thinks he had been on deck above five minutes when the collision took place. It would seem the time must have been much shorter, and during that time he states that he was busily engaged in squaring the cross-jack-yard. It does not, therefore, appear that he had better means of knowing what passed on board the Anne than the other persons on board the Liberty ; and, indeed, he must have been less likely to have such knowledge than his shipmates, who had been on deck and on the alert all the time. And though his statements are more positive in form than those of the master, second mate, and other people of the Liberty, who saw the Anne from the time when she was between half a mile and a mile off, yet it is but fair to him to infer that he only intended to state what must, to the best of his knowledge and belief, and according to his impressions, have occurred on board the Anne as the other people of the Liberty had done. The positive testimony of the master, mate, seamen, and hands of the Anne as to what passed under their own eyes, and was done by them, cannot be overset by the impressions or belief, in what form so ever stated,—formed in a moment of excitement,—by persons who were in another vessel, and could have no positive knowledge of what passed on board the Anne, and whose opinions would naturally be biased in favour of their own ship. While, then, I give full credence to their statements as to matters within their knowledge, I cannot allow their opinion to override the positive facts proved on the other side ; and I, therefore, come to the conclusion that the Anne did keep her course, and that the helm of the Liberty was not ported, and the ship kept off the wind as soon as she saw the Anne and knew her position and course, or in sufficient time to prevent the accident ; and that the collision must be imputed to her default in this respect.

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It would seem most probable that the look-out kept on board the Liberty was not as good as it should have been, or as that kept on board the Anne: an inference which may be fairly drawn from the fact that the Anne's people all state distinctly that they saw the Liberty when she was yet two miles off; while the people of the Liberty say they did not see the Anne until she was within half that distance, and the mate of the Liberty, who says he came on deck as soon as the alarm was given of the Anne's approach, states that the ships were then about a quarter of a mile or a little more apart; and it is admitted on all sides that the night was clear, and the mate himself says that a ship's light could have been seen two miles off. It appears also from the evidence that there were at the time about fifty vessels beating up in that part of the river, and that this fact had been observed by the people of both vessels: so that there was every necessity for the utmost possible vigilance and care; and if the collision occurred from the want of a proper look-out on board the Liberty, it occurred by reason of the want of that proper care on the part of the people which the circumstances of the case required. It is not enough to shew that the accident could not be prevented by the party at the moment it occurred, if previous measures could have been adopted to render the occurrence of it less probable; and it does appear such measures might have been but were not taken by the Liberty to avoid the accident in question.

But further, it is provided by the 33rd section of the Merchant Shipping Act Amendment Act of 1862, that "In every case of collision between the two ships it shall be the duty of the person in charge of each ship, if and as far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as may be practicable, and as may be necessary in order to save them

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from any danger caused by the collision : in case he fails so to do, and no reasonable excuse for such failure is shewn, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect or default." And it is alleged and proved in this case that, after the accident, the Liberty did not stop to render or offer to render any assistance to the Anne ; but, on the contrary, proceeded on her way, and was not again seen by the Anne's people until the second day after the accident, when she was seen off Manicouagan, and, again, when after some search and difficulty they discovered and recognized her in the harbour of Quebec as the ship which had come into collision with them. Nor is it alleged or shewn on the part of the Liberty that there was any reasonable excuse for such failure to comply with this humane provision of the Act ; and this failure alone, if the case were otherwise doubtful, would, under the statute, fix the responsibility of the collision on the Liberty (b).

It may not be irrelevant to remark that I am relieved from the consideration of the question, whether the present was the case of vessels meeting, to which, under the provisions of the Merchant Shipping Act and our own Statute, the rule requiring both vessels to port their helms would apply. Any difficulty which might have arisen as to what was intended by vessels meeting has been removed by direct decisions of the High Court of Admiralty of England, confirmed by the Judicial Committee of the Privy Council (c), that the term meeting applied only to a case when vessels meet in opposite directions end on or

(b) *The Inflexible*, Swabey, 114 (15th March, 1861), and 35 ; *The Cleopatra*, *ibid.*, 135 ; *Lushington's R.* 277.
The Halcyon, 1 *Lushington*, 100 ; *The Arthur Gordon*, *ibid.*, 272 ; *The Independence*, 14 Moore's Privy Council Cases,

(c) *The Queen of the Orwell*, (19th Nov. 1863), 7 *Law Times* (N. S.) 839.

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nearly so, and not to sailing vessels on opposite tacks crossing so as to involve risk of collision ; and it is satisfactory to know that these decisions have been confirmed, and all ambiguity removed by the late Act of the Imperial Parliament, 25 & 26 Vict. c. 63, amending the Merchant Shipping Act, and by the regulations made under it which came into force on the 9th of January, 1863, and have been promptly adopted by the Canadian Legislature in the Act 27 & 28 Vict. c. 13, which came into force on the 1st of September last, and which have also been adopted by almost all countries in Europe and America, so that they may now be considered as forming the universal rule of the sea.

James Dunbar and John W. Cook, for the Anne.

F. C. Vannorous, for the Liberty.

Tuesday, 5th September, 1865.

MARIE VICTORIA—ELLIS.

It appears to be the general sense of the maritime world that the rate of salvage in cases of derelict should not, in ordinary cases, range below one-third, nor above a moiety, of the property.

This was a suit for salvage promoted by Louis M. Lavoie, a pilot, Napoléon Lavoie, Pierre Lavoie, James Banville, and Daniel Banville, all seafaring persons, for services rendered the schooner Marie Victoria, which was discovered by them, deserted by the crew, below Father Point, on the morning of the 7th of November last.

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JUDGMENT.—*Hon. Henry Black, C. B.*

This is a claim for salvage under the following circumstances:—On the 24th of October, 1864, the schooner Marie Victoria, Thomas Ellis, master, of the burthen of 90 tons, and having a crew of six men, cleared from the port of Montreal for that of Nassau, in New Providence; her cargo consisted of 547 barrels of coal oil, with some other articles of smaller value. The schooner as she now lies has been appraised, under the authority of the Court, at 2,280 dollars, the coal oil at 9,656 dollars, and the other articles of freight have been sold as perishable, under the like authority, and have produced a net sum of 560 dollars. Nothing appears of what occurred on board the vessel, from the time of her leaving Montreal, until she was found abandoned on the 7th of November last, in the open river about fifteen miles from Father Point, neither master nor crew having been found on board of her, nor having been seen or accounted for in any way. Very early on the morning of the 7th of November, Louis M. Lavoie,

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one of the salvors, a pilot, and one of those ordinarily employed to pilot the mail steamers to Quebec, was at the pilot station at Father Point, waiting for one of such steamers ; and while so waiting, and scanning the horizon with his glass in order to see the steamer at the earliest possible moment, he saw the schooner in question, about fifteen miles off, drifting at the mercy of the winds and waves. The weather was then very rough and boisterous, even for that advanced season of the year ; a very heavy sea was running and the wind blowing hard from the south, driving the vessel down the river and towards the iron-bound coast of the north shore, on which she must inevitably have drifted if not succoured. Owing to the lateness of the season and roughness of the weather, and the very early hour at which she was discovered in this position, it is very improbable that any other person would have discovered her in time to relieve her before she would drift on the rocks or founder, in either of which cases she would have been totally lost. On discovering the vessel, Lavoie lost no time in collecting several of his neighbours and friends (the other salvors), and in inducing them to launch a large boat and to endeavour to reach the schooner, and so to save the lives and property on board. These persons were Napoléon Lavoie, his son Captain Pierre Lavoie, James Banville, and Daniel Banville, all seafaring men, knowing perfectly the risk they incurred ; to whom Lavoie explained the nature of the enterprise in which he wished them to engage ; and whom he persuaded to launch the boat in question, the only one in the neighbourhood at all capable of performing the service. Lavoie himself, owing to his engagement to take charge of the mail steamer for which he was waiting, was unable to accompany them ; but, after having assisted them to launch the boat, returned to the look-out station. The men who undertook the service, knowing the necessity of prompt action if they were to save life and property, started at once, without

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taking time to furnish themselves either with provisions or suitable clothing for what promised to be, and actually was, so lengthy a voyage. Lavoie anxiously watched their progress from half-past six in the morning until seven in the evening, when the steamer appeared, and he was obliged to take charge of her to Quebec. The salvors in the boat reached the schooner at one o'clock, after having experienced, from the time they left the shore, the roughest and most inclement weather—a violent and heavy sea, being accompanied by storms of rain, hail, sleet, and snow. After rowing and sailing for about six hours, they reached the schooner, and found her to be the Marie Victoria, totally abandoned, and full of water up to her deck, drifting helplessly, and appearing every moment about to founder. Her bow was shattered as if she had struck the rocks, and she was plunging violently in the heavy sea. Having rowed round her, and hailed her, and finding no one on board, they determined to board her, notwithstanding the risk they ran in so doing. They found no one on board; the cargo had shifted from the violent motion of the vessel, and she was entirely out of trim, being much too deep forward, while the water came in by the holes in her bow. By dint of great labour the salvors succeeded in getting the cargo settled so far as to render the schooner less dangerous to navigate. She was then about fifteen or eighteen miles from Father Point, which bore about south-west, and was the nearest land, and the most easy to reach. Having made sail on the schooner, they towed her with their boat, which they rowed; and working with all their might, they finally succeeded in reaching the shore at Barnabé Island, about three miles to the westward of Father Point, at two o'clock in the morning of the 8th of November, after eighteen hours of danger and laborious exertion. They assert that they were so thoroughly exhausted by cold, wet, and hunger, that they could scarcely walk, and that their lives were

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endangered. When they had anchored the schooner they employed men to work her pumps, as she was still leaking, and threatened to sink. They worked in this manner day and night, under the direction of Louis M. Lavoie—who sent his instructions by telegraph from Quebec, and defrayed the expenses—he and all the rest being intent on bringing the vessel to Quebec before the close of navigation, for the benefit of all parties concerned. On the 15th of November the salvors left Barnabé Island in the schooner, intending to take her to Quebec. They had to work day and night at the pumps until the 17th, when finding the pumps wearing out and the water gaining on them, they were forced to run the vessel ashore in the river Oty, where she still lies. There, Louis M. Lavoie having joined them, they discharged the cargo, and stored it safely, employing for that purpose the necessary men and vehicles, and hauling the vessel up in order to protect her from the ice. In doing all this they were occupied for three weeks, and disbursed large sums of money amounting to not less than 478 dollars, in paying men for pumping, landing, and storing the cargo, and getting the vessel out of damage from ice, besides giving their time and labour.

Such is an outline of the facts of the case about which there is no dispute; nor can there be any doubt that the case is one of derelict in the sense of the maritime law. The vessel was found deserted and abandoned, and this clearly without any intention of returning or recovering the vessel; for neither master nor any of the crew were found on board, or in the neighbourhood of the wreck, or have since been heard of. The saving of the vessel was attended by great labour and peril, and no inconsiderable expense; and the salvors succeeded only after severe and long-continued exposure and hardship; and their act was one of great gallantry and humanity. It is clearly the interest of the commercial world that actions of this kind should

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be properly appreciated and liberally recompensed; the amount to be awarded rests in the discretion of the Court, but this discretion is not to be exercised arbitrarily or without due regard to the principles of law, and the practice of the Courts. It appears to be the general sense of the maritime world that the rate of salvage in cases of derelict should not in ordinary cases range below one-third, nor above a moiety of the property; and in a case as late as the year 1858, the Judicial Committee of the Privy Council, composed of some of the most eminent jurists of England, reversed a decree of the Vice-Admiralty Court of the Bahamas awarding seventy-six per cent. in a most meritorious case of salvage, and reduced the amount to fifty per cent. (a). I consider the present case as a most meritorious one, and feel inclined to give the highest rate of remuneration to the salvors, but I cannot but consider myself bound by the decision of the Privy Council, and shall therefore decree to the salvors the one moiety of the value of the schooner and cargo, and their legal costs (b).

Gowen and Lloyd, for Salvors.

Lelievre, Q.C., for Henry Starnes, owner of the schooner, and for Alexander Saunders, owner of the cargo.

(a) *The Inca*, 12 Moore, P. C. Rep. 189. Before the Right Hon. Dr. Lushington, Lord Kingsdown, Sir Lawrence Peel, Sir John Taylor Coleridge, and

Sir Cresswell Cresswell.

(b) *The Francis Mary*, 2 Hagg. 89; *The Reliance*, *ibid.* 90.

Tuesday 5th December, 1865.

BRITISH LION—MANN.

Under the Vice-Admiralty Courts Act 1863, the Court can enforce the payment of reasonable towage, but has no power to enforce an agreement to employ a particular tug, either for a definite or an indefinite quantity of work.

Where a tender is refused simply on account of more being alleged to be due, it is not necessary that the amount tendered should be tendered in coin.

JUDGMENT.—*Hon. Henry Black, C. B.*

BRITISH LION.

This is a suit for towage brought by the owners of the steam-tug Mars against the ship British Lion, and her owners, under the following circumstances. The ship was coming up the St. Lawrence to Quebec, and on the 8th of October last, when off the parish of St. Jean on the Island of Orleans, about twelve miles below the city, she met the Mars looking out for employment as a tug; and the latter ran alongside and inquired whether the ship required to be towed up. The master of the ship asked the terms, and the master of the tug asked forty dollars; but upon being offered twenty dollars agreed to take it, but alleges that he did so on condition that the Mars should have the towing of the ship, if required to be moved whilst in port, provided,—as he states in his evidence,—she was powerful enough, and if not then upon condition that she should be assisted by another. This agreement is denied by the master and owners of the British Lion, and has not in my opinion been proved, but on the contrary disproved by the evidence of the mate, second mate, boatswain, and steward. Even if it had been proved it is too indefinite and uncertain to be enforced: nor was there such reciprocal obligation as would

constitute a contract. If the agreement had been proved as alleged, and had been sufficiently certain, I should still have great doubt as to the power of the Court to deal with it. No doubt the Court can, under the statute 26 Vict., c. 24, enforce the payment of reasonable towage, but it does not seem that it has power to enforce an agreement to employ a particular tug either for a definite or an indefinite quantity of work; and Dr. *Lushington* in the case of the *Martha* (a), held the same opinion in a case under the 3 & 4 Vict., c. 65, s. 6, giving similar jurisdiction to the High Court of Admiralty of England. There is a second head of demand for twenty dollars for moving the ship from opposite the Champlain Market to Diamond Harbour, a distance of about half a mile, which occupied about an hour and a half; but it appears that there was an express agreement to perform this service for ten dollars; and the claim beyond that sum for detention is altogether unfounded. Viewing the case as I do, the owners of the *Mars* were entitled to twenty dollars for the first head of demand, and ten dollars for the second, and no more; and these sums appear to have been tendered, first, in a cheque on the Bank of British North America; and, secondly, in notes of the City Bank. The amount tendered was refused as being insufficient, not on the ground that it ought to have been made in current coin; and there is no doubt that where a tender is refused simply on account of more being alleged to be due, it is not necessary that the amount refused should be tendered in coin. This is the doctrine both of the Common Law of England, and of the Admiralty Courts of England and America (b). The action is dismissed with costs: and I

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(a) *Vernon Lushington's Reports*, p. 314 (25th April, 1861). p. 238; *Lockyer v. Jones*, *ibid.*, p. 239 (in notes); *The Frederick*, 1 Hagg. 218; *Dunlap*

(b) *Black v. Smith*, *Peake's Nisi Prius Reports*, p. 121 (3rd edition); *Cole v. Blake*, *ibid.*, on the Practice of Courts of Admiralty, p. 103; *Conkling on*

BRITISH LION. adopt this course with the less regret, as the promoter thought proper to endeavour to compel payment of the claim by arresting the ship just as she was on the eve of sailing, by which alone considerable loss and inconvenience were sustained by the owner.

Andrews and Andrews for owners of Mars.

Alleyn and Alleyn for owners of British Lion.

the Admiralty Jurisdiction, Law, and Practice, II., 441.

There is much strictness in the doctrine of the Common Law Courts, in relation to the manner in which a tender should be made, and the production of the money, even when the offer of payment is rejected. The strict doctrine of the common law is not recognized in the Admiralty Courts. A sincere offer of payment by a party, who has the means of making immediate payment, has often been ruled in the District Court of the United States for the district of Massachusetts to be a good tender; and the actual production of the money is not required when the offer of payment is rejected. It has often been held in that Court, that where a tender has been made in current bank

bills, or a cheque on a bank drawn by a merchant of established credit, it was a good tender unless specially objected to; and where this kind of tender is specially objected to, the party tendering it is considered to be entitled to a reasonable time to procure coin where coin is specially required. A premature action, where a fair offer of settlement has been made, exposes the libellant to the loss of his costs, and, in some cases, to the payment of costs to the adverse party, and the proctor, if acquainted with the facts of the case, to the animadversion of the Court, for the impropriety of creating unnecessary litigation for the sake of costs. Dunlap on the Practice of Courts of Admiralty, p. 103.

Friday 19th January, 1866.

ANGLO-SAXON—WESTGARTH.

The owners of a vessel, having a duly licensed pilot on board, are protected by the Act 27 & 28 Vict. c. 13, s. 14, from liability for damages occasioned by the act of the pilot.

The pilot in charge is solely responsible for getting the vessel under way in improper circumstances.

Where the master and crew did their duty, and the accident arose entirely from their obedience to the orders of the pilot, the owners of the vessel are held entitled to the exemption provided by the Act.

How far steam-tugs employed in towing merchant vessels are bound to be subservient to the orders of the pilot in charge; and although the master of a tug must, implicitly, obey the orders of the pilot of the vessel in tow, cases may occur where he may be justified in not doing so.

Actual possession of a vessel is sufficient title against a mere stranger or wrongdoer.

This was a cause civil and maritime promoted by the owner of the barge *Emer* against the ship *Anglo-Saxon*, to recover for a total loss, resulting from a collision between the *Anglo-Saxon* and the Prussian ship *Theodor Behrend*, astern of which the barge was fastened in the harbour of Quebec, in the forenoon of the 27th of May last. The facts of the case are fully set forth in the following judgment of the Court.

JUDGMENT.—*Hon. Henry Black, C. B.*

This is a suit brought by John McNaughton of Montreal, Forwarder, as sole owner of the barge *Emer*, 157 tons register, of which George Guérard was master, against the ship *Anglo-Saxon*, 1104 tons register, owned by John Farnworth and David Jardine of Liverpool, merchants, and whereof John Westgarth was master, for damages

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occasioned by a collision between the Anglo-Saxon and a Prussian vessel called the Theodor Behrend, astern of which the Emer was moored; and by which collision the hawsers fastening her to the Theodor Behrend were broken, and the Emer being thus cast adrift was carried foul of the ship British Lion, and was so damaged by the collision that she sank in deep water and was lost. The facts of the case appear by the pleadings and evidence, consisting of an unusual mass of depositions, to be as follows. On the twenty-seventh of May last, in the forenoon, the Emer, having taken in a cargo of coals from on board the Theodor Behrend, had dropped about thirty feet astern of her, and was then fastened to her by two hawsers of sufficient size and strength. The Theodor Behrend was then lying at anchor in the tideway in the harbour of Quebec, about half way between Point Levi and Quebec, and about half a mile from each shore. On the same day about an hour or an hour and a half later, that is between eleven and twelve, the Anglo-Saxon, laden with timber, and drawing twenty-two feet six inches water, was lying at Bogues' Booms, from half a mile to a mile above the Champlain Market, ready for sea, bound for Liverpool, having on board a crew of twenty-seven men, all told. The master of the Anglo-Saxon had engaged from Messrs. Thomas Burns and John G. Burns, two steamers, the Kate and the Mars, to tow her as far as Indian Cove; and the corporation of pilots had appointed Paul Paquet, a branch pilot for and below the harbour of Quebec, to conduct her down the river. At the time above-mentioned the pilot was on board and in charge, and the steamers being on the spot and ready, he placed the Mars, said to be about seventy or seventy-five horse power, on the port side of the ship, and the Kate, of about thirty or thirty-five horse power, a head at a distance of about sixty fathoms according to the evidence of the master of the Mars, and about thirty-five or forty fathoms according to that of

the pilot, and in this order he left the booms. As soon Anglo-Saxon. as the ship started, her master, having business in town, left her in charge of the pilot, but with the two mates and other hands on board. The pilot expressly states in his evidence that the two steamers appeared to him to be sufficiently powerful to tow the ship. The weather was fine and clear, the wind light from the eastward but almost calm, it was spring tide, and the tide had been ebbing about three hours, and was running strong down. The Quebec side of the river was a good deal crowded with vessels, and on starting the pilot caused the ship to be steered so as to cross the river towards the Point Levi side where there were fewer vessels. He directed the steamer Kate, on leaving the booms, to steer so as to pass astern of the brig James Caskey, lying a short distance ahead, that is above, the Anglo-Saxon in the stream, and about half a mile above, and a little to the south or Point Levi side of the Theodor Behrend. He says that from the moment they left the booms to the time of the accident, he stood on the Anglo-Saxon's bow, and with his hand directed the master of the Kate, which was about thirty-five or forty fathoms ahead; and that the master of the Kate acted according to directions, until, to the great surprise of the pilot and without any order, he let go the tow rope. He says that when this was done the Anglo-Saxon was about one hundred fathoms from the Theodor Behrend, and a little to the north or on the Quebec side of her. Becoming alarmed, and thinking that the Mars alone would not be able to tow the Anglo-Saxon clear of this vessel, he ordered her port anchor to be let go, which was done, and sixty fathoms of chain having been paid out, it stopped the Anglo-Saxon, and brought her bows to the stream; and in swinging to the tide the Anglo-Saxon came into contact with the Theodor Behrend, the star-board cathead of that ship catching in the mizen rigging on the port side of the Anglo-Saxon. The shock was

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not severe, doing but trifling injury to either vessel, but it caused the Theodor Behrend suddenly to swing towards the Point Levi side of the river, and the jerk, or possibly some movement of the Theodor Behrend in the same direction to avoid the collision, broke one of the hawsers by which the heavily-laden Emer was fastened to the Theodor Behrend; and the whole strain coming upon the other, carried away her windlass to which it was made fast; and the Emer being thus adrift, without any sail or motive power, and being unable from the loss of her windlass to come to an anchor, was carried helplessly down by the strong tide, until she struck the ship British Lion, and was so much injured by the collision that she sank almost immediately in deep water, and became a total loss. For the damage thus occasioned the present suit is brought, on the ground that the collision occurred solely through the "inattention or want of skill of the persons on board of the Anglo-Saxon." One ground of the defence is that the Emer was not fastened astern, or on either side of the Theodor Behrend at the time of the collision; or that if she were so, the people on board of her had before the collision slipped one of the hawsers and cut the other, thus causing the loss of the vessel by their own fault. There are also allegations that the fault was with the Theodor Behrend, which it is asserted was hailed from the Anglo-Saxon before the accident, and desired to starboard her helm and to pay out her chain, which it is said she did not do. The first ground of defence is clearly unfounded, the Emer is proved by positive evidence to have been fastened astern of the Theodor Behrend as alleged in the libel; and all her people assert positively that the hawsers were neither cut nor slipped, while there is nothing but negative evidence or opinions on the other side: and as to what was or was not done on board the Theodor Behrend, it should, if material, have been proved by witnesses from on board that ship; no such witnesses

have been called, nor does the evidence adduced in any way supply their place. It would, moreover, seem immaterial whether being at anchor and suddenly hailed by a ship drifting down upon her, and within a few fathoms of her, the people of the Theodor Behrend did or did not immediately comply with the request made to them, which they may not have had either time or means to do. The more material ground of defence is, that the Anglo-Saxon was not in charge of the master, or any person employed or engaged by her owners, but was in the charge and under the control of the pilot, taken on board and placed in charge in conformity with the requirements of the law, and that all her movements were directed by him. By this defence the owners of the Anglo-Saxon, virtually, though not in express terms, allege that the collision, if occasioned by the fault of any person on board the Anglo-Saxon, was occasioned by the fault of the pilot in charge, and consequently that they are exempt from responsibility, under the Act 27 & 28 Vict., c. 13, s. 14, and the decisions in cases where the employment of pilots is compulsory by law. The Anglo-Saxon was beyond all question in the sole charge of the pilot, her master did not interfere, nor would he have been entitled to interfere in getting her under way, or in moving her; he had placed at the disposal of the pilot such steam power as the pilot himself declares to have been sufficient. The time of starting, the placing of the steam tugs, and the whole course to be pursued were absolutely under the pilot's control; he knew or ought to have known the state and force of the tide; it was broad daylight and fine weather, and he saw the position of the vessels in the harbour. If he thought there was not room enough, or that the current was too strong, or that the steam power furnished him was not sufficient, it was his duty to say so, and to refrain from running any risk. He used his own judgment, and if he erred in so doing the owners of the

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Anglo-Saxon are not responsible for his error. He alleges in justification that the master of the *Kate* let go the tow rope without his order; but the master of the *Kate* states that after obeying the pilot's orders with respect to the course he should steer, he found himself across the current, and hauling the *Anglo-Saxon* in a direction contrary to that in which the *Mars* was hauling her, and that he was near capsizing and unable to change the direction of his vessel on account of the strength of the current; and this statement is confirmed to a great extent by the evidence of the master of the *Mars*, who says that it was impossible to change the course of the *Kate*, so strong was the current, and that the *Anglo-Saxon* towed by the *Mars* formed an angle with the *Kate*, and it was under these circumstances that the master of the *Kate* let go the tow rope. He was evidently not bound to imperil his own vessel, more especially when he found that his continuing to tow the *Anglo-Saxon* would only tend to bring her into a worse position. He was at a very short distance from the *Theodor Behrend*, so short that one minute's delay might have brought the *Kate* into collision with that vessel and destroyed her (a). The pilot admits as already stated, that every positive order he gave was obeyed by the master of the *Kate* down to the moment when he cast off the tow rope; and the necessity of doing this appears to

(a) Steam-tugs employed in an ordinary service of towing merchant vessels are bound to be subservient to the orders of the pilot on board the vessel in tow. The master of the tug must implicitly obey and carry out the orders of such pilot; excepting in the case of wilful misconduct, or gross mismanagement, on the part of the pilot; as, for example, where he sees the pilot acting in such

a manner as to threaten the destruction of his own vessel, and to endanger the lives and property of others. In such case the master of the steam-tug would unquestionably be justified in exercising his own discretion, and in acting upon his own judgment independently of the pilot. *Dr. Lushington, in case of the Christina, 3 W. Rob. 29, 30.*

have been occasioned by the position into which these orders had brought the *Kate*. Weighing all the evidence together it appears to me that the pilot committed an error in judgment, in supposing that there was in the then state of the tide and under all the circumstances, room enough to justify his attempting to pass astern of the *James Caskey* and ahead of the *Theodor Behrend*: nor is it by any means certain that his alarm and want of presence of mind when he found himself in a dangerous position, and his order to let go the anchor of the *Anglo-Saxon*, were not the immediate causes of the collision; and consequently that as the accident occurred by the sole fault of the pilot in charge, without any fault of those on board of the *Anglo-Saxon*, who were under the control of her owners, or of those on board of the two steamers, employed by her owners but under the sole control of the pilot, the owners of the *Anglo-Saxon* are not responsible, and the decree of the Court must therefore be in their favour, without costs, which are never awarded in the High Court of Admiralty in cases of collision under such circumstances (b). A point was raised by the counsel for the *Anglo-Saxon* which it may be proper to notice, as if the objection taken had been maintained it might have entitled his party to recover his costs. The objection was the want of a perfect title on the part of John McNaughton, the formal title being in his brother William McNaughton, from whom a regular transfer was obtained after the suit was commenced. Such a transfer would have been necessary to give John McNaughton certain rights under the Registry Laws; but he was before, and at the time of the accident, in the actual possession, control, and navigation of the *Emer* for his own use and benefit, under and with the consent of one who had a

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(b) *The Agricola*, 2 W. Rob. 465; *The Argo*, Swabey's Rep. 465; *The 21: The Northampton*, Spink's Annapolis, Lushington's Rep. Ecc. and Ad. Rep. 161; *The* 313.

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perfect title, which is quite sufficient to enable him to maintain a suit for the protection of the property against a wrong doer, who would not be allowed by law to set up want of formal title as a defence (c).

Andrews, Q. C., for Emer.

Hearn for Anglo-Saxon.

(c) Actual possession, whether rightfully or wrongfully obtained, is a sufficient title against a mere stranger or wrongdoer. Where the plaintiff bought and paid for a ship stranded on the English coast, but the transfer was not regular; and he tried to save her, but she went to pieces; and the defendant possessed himself of parts of the wreck, which drifted on his farm: *Held*, the plaintiff's possession enabled him to recover them in trover. *Sutton v. Buck*, 2 Taunt. 302.

A party actively and directly concerned in the purchase and outfit of the vessel, in the appointment of the master, and in the subsequent management of

the vessel, whose name, however, was not inserted in the ship's register, or bill of sale, considered as proprietor. *The Nostra Signora de los Dolores*, 1 Dodson, 296.

A shipowner may demise his ship for a term, surrender all control over the ship itself, the appointment of her master and mariners, and even relieve himself from responsibility for wages and repairs. If he do so, the person to whom he lets the ship, who is called the charterer, becomes owner *pro tempore*, and the rights of the absolute owner are suspended. Lord Tenterden's Law of Shipping, p. 205 (10th edition, by Mr. Justice Shee).

Friday 27th April, 1866.

ADONIS—LAVOIE.

Advances which may become the subject of bottomry, must be advances made for the service of the ship during the particular voyage for which she is engaged.

A bottomry bond given by the master after the advances had all been made is valid, provided they were made with an understanding that such bond should be given.

The validity of the bond is not affected by the circumstance of the money being advanced before an intervening voyage, if given for advances necessary for the vessel to prosecute and complete the original voyage.

Unless fraud or collusion be proved, or that other credit existed, every fair presumption is to be allowed to uphold such bond.

JUDGMENT.—*Hon. Henry Black, C. B.*

This is a suit upon a bottomry bond, instituted by Auguste Prioux of the city of Halifax in Nova Scotia, against the brigantine Adonis, of the burthen of eighty-three tons, belonging to Quebec, and owned by Roger Lavoie, and whereof his brother George Lavoie was master. The Adonis sailed from Quebec in the autumn of 1861, and in the month of December went into the port of Halifax in distress and disabled; she had lost sails, anchor, and chains, and had been ashore, she was leaking, and required a new keel, and her deck and bottom required caulking, and she required some new deck planks, as well as a new anchor and chain. The master was a stranger in Halifax, and neither he nor the owner had credit there. Under these circumstances he applied to Mr. Prioux to make the necessary advances for the repair of the vessel, and for her outfit for another voyage. Mr. Prioux made the advances upon the security of the vessel, and he swears that

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he would not have advanced the money unless upon such security. The advances thus made amount to over £371 currency. The repairs were completed in April, 1862, when it being too early for a voyage to Quebec, the master took a charter to Mayagüez in the island of Porto Rico, whence he returned to Halifax in June, 1862. The freight outward and homeward earned on this voyage was paid over to Mr. Prioux, in part payment of his advances, which were by such payment reduced to £170. The Adonis was then chartered to return to Montreal, touching at Sidney in Cape Breton for a cargo of coals, leaving Halifax in ballast. It is in evidence that under the laws of Nova Scotia, the vessel would have been liable to attachment for the balance of Mr. Prioux's claim, for which he all along considered that he had a lien on the vessel, as the master had also understood that he had. When the vessel was about to leave for Canada, Mr. Prioux called upon the master for a bottomry bond, to secure the unpaid portion of his advances, and so to avoid the necessity of seizing the vessel, and to afford her facilities to complete her voyage to Montreal. Before granting this bond the master telegraphed Charles Samson of Quebec, a heavy mortgagee of the Adonis, for instructions, and the answer he received from Samson, on the 8th of July, was that he had better give the bottomry bond and proceed to Quebec, getting the parties to send the bond to Quebec for collection; and this telegraphic answer was approved by Roger Lavoie, the owner, in a letter from him to the master, dated on the 17th of the same month of July. With this sanction of the mortgagee, the bond was given by the master on the 10th of July, and ratified and approved subsequently by the owner on the 17th. The voyage to Montreal was duly performed, and the bottomry bond not being paid by the owner, proceedings were commenced for the recovery of the amount shortly after her arrival at Montreal, and the suit has been pro-

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tracted to the present period. The owner interposed a claim and defensive allegation, denying the validity of the bond, on the ground that the advances were made on the personal credit of the owner or master, and not on the security of the ship; and were made not at the time when the bond was given, that is, when she was about to sail for Montreal, but on a previous occasion, since which she had made a voyage to the West Indies; and that she was not in distress or in need of repairs when the bond was given.

It is to be observed that the vessel belonged to Canada, and from the season at which she left it, it is evident that she left on a trading voyage to terminate on her return to Canada in the following spring. The precise nature of the voyage is not stated in the case, but it is clear that it was to extend to some place beyond Halifax, and to which an advantageous charter might be obtained. I therefore hold, that the voyage from Quebec in the autumn and back to Montreal in the spring was one voyage; and that the voyage to Porto Rico was an intervening voyage, if not part of that originally contemplated, which it may have been. And though the advances were made antecedently to the voyage to Porto Rico, and the bond was not executed until after the completion of this voyage, it is still a valid bond, given for advances necessary to enable the Adonis to prosecute and complete her original voyage (a). It was evidently the understanding of the parties that the money should be secured by a bottomry bond, nor could the voyage have been completed if the bond had not been given. It is not pretended that there was any fraud or collusion on the part of the master, or of Mr. Prioux, who, on the contrary, appears to have acted with the most perfect good faith. In point of fact bottomry bonds are generally, and must often, from the very nature

(a) *The Mary Ann*, 4 Notes of Cases, 376, 391.

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of the transaction, be given after the whole supplies and repairs have been furnished and made, for the plain reason that the advances required to meet the expenses can rarely be ascertained until that period. It is sufficient, as Lord Stowell observed in a parallel case, that the understanding of the parties at the time was that the advances should be secured upon the vessel, and he added, what is very pertinent to the case, that the party who lent the money had a right by the maritime law, to detain the ship and cargo until the debt was repaid, and it was only by means of the bond that the owners had the benefit of the liberation of their property (*b*). Bottomry bonds being for the benefit of the shipowner, and for the general advantage of commerce, are greatly favoured in the Court of Admiralty, and where there is no suspicion of fraud, every fair presumption is to be allowed to support them. I therefore pronounce in favour of Mr. Prioux, with costs against the owner, who has contested the validity of the bond.

Vannovous for the bond-holder.

Campbell for owner of Adonis.

(*b*) *La Ysabel*, 1 Dodson, 276. *Oriental*, 3 W. Rob. 243; and
See, also, *The Vibilia*, 1 W. Rob. S. C., 7 Moore's P. C. Cases,
 1; *The Lochiel*, 2 W. Rob. 34; 398.
The Edmond, 1 Lush, 57; *The*

Wednesday 11th July, 1866.

ROCKAWAY—BOSSANCE.

In a case of collision where there is a reasonable doubt as to which party is to blame, the loss must be sustained by the party on whom it has fallen.

JUDGMENT.—*Hon. Henry Black. C. B.*

This suit is brought by Henry Briggs, of Hull, in England, owner of the ship Countess of Elgin, against the barque Rockaway, owned by James Lewis Carvill, William Francis Carvill, and Patrick Henry Carvill, all of Newry, in Ireland, carrying on trade under the firm of Francis Carvill and Sons, to recover damages arising from a collision between the ship and the barque on the morning of the 24th of May, 1864. On the morning of the 22nd of that month the Countess of Elgin, a ship of about one thousand and five tons burthen, and whereof Thomas Mitchell was master, arrived in the harbour of Quebec from London, and anchored in the lower part of the upper ballast ground in that harbour. In the afternoon of the same day, between four and five o'clock, the Rockaway, a barque of about five hundred to six hundred tons burthen, and whereof Stirling Carey Bossance was master, arrived in the harbour in charge of the pilot Celestin St. Pierre, No. 53, and was by him brought to anchor in the same ballast ground, at a distance variously stated by the different witnesses examined, at from half a cable's length to two cables' length; those examined on the part of the Countess of Elgin stating it at half a cable's length, and those examined on the other side at one, one and a half, and two cables' length. The Countess of Elgin lay nearer to the Point Levy than to the Quebec shore, the Rockaway

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nearly abreast but rather lower down, and nearer to the Quebec, by the distance between them. The tide was flood when the Rockaway arrived. The two vessels lay in this position until the 24th, swinging with the tide four times each day without accident. On the last-mentioned day the tide began to ebb at about nine o'clock in the forenoon, the wind being then light from the east, or a little south of east. The Rockaway appears to have swung first. It does not appear whether on previous occasions the vessels swung the same way; but on the 24th they swung to the ebb in opposite ways, the Rockaway's head in swinging turned towards the Point Levy shore, while the Countess of Elgin turned with her head towards the Quebec shore. They seem to have lain for some time during the slack water athwart the stream. The Rockaway being deep in the water, was the first to feel the current, and swung round with her head up the stream. The Countess of Elgin was lighter and did not feel the current so much, and remained longer athwart the stream: and while the vessels were in these relative positions they came into collision, and the Rockaway's bow came into contact with the starboard side of the Countess of Elgin just abaft the fore-rigging, staving in the bulwarks, carrying away about forty feet of the main rail, and four stanchions, and breaking the paneling, doing the damage complained of, estimated at one hundred and fifty dollars, and for which this suit is brought.

The question is whether either, and if either, which of the vessels was in fault; and whether the accident was occasioned by such fault, if any, or was the result of unavoidable mishap, or of some inscrutable cause.

As the Countess of Elgin was the first to come to anchor, it was the duty of those in charge of the Rockaway to come to anchor in such a position as that the vessels could swing with the tide, without risk of coming

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together, provided the anchor of neither moved from its place, in other words the Rockaway was bound not to give the Countess of Elgin a foul berth. The witnesses contradicted one another directly on this point. If those produced on the part of the Countess of Elgin are to be believed, the Rockaway did give the Countess of Elgin a foul berth, and this was the cause of the accident. The witnesses on the other side deny this, and it seems impossible to say which statement is correct. But if the assertion made on the part of the Countess of Elgin is correct, then the Rockaway's being anchored in such a position as to make the Countess of Elgin's berth foul, was the fault of the branch pilot who was in charge of the Rockaway on the 22nd, and brought her to anchor, and the owners of the Rockaway would be relieved of responsibility. The two vessels could not have come into contact if anchored at a proper distance from each other, unless one at least dragged her anchor. Now it is positively sworn on the part of the Rockaway that she did not drag her anchor, and that her position after the accident was exactly the same as it had been from the first; nor is this contradicted on the other side, the witnesses for the Countess of Elgin saying that the Rockaway ran up with the wind, but they do not say that she dragged her anchor. On the other hand, the witnesses on the part of the Countess of Elgin admit that after the accident she was lower down relatively to the Rockaway than she was before it; and it is possible, though her witnesses positively assert the contrary, that the accident was occasioned by her drifting down to the Rockaway. The direction of the wind is admitted on both sides to have been from the south of east, that is, up the stream, but rather off the Point Levy shore; and the Countess of Elgin, being light, and feeling the wind more and the tide less, both from her being lighter and from her being nearer the Point Levy shore, and catching the ebb later than the Rock-

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away, may have been driven across the stream towards the Rockaway, without its being in the power of her crew to prevent it; they say themselves that she had no way, and her helm had therefore no effect on her, in other words that she was unmanageable. The strength of the wind is differently stated on the two sides: the people of the Countess of Elgin represent it as strong enough to drive the Rockaway upwards against the tide, and in this case it would be strong enough to drive the Countess of Elgin across the tide towards the Rockaway. The people of the Rockaway say that it was light, and with all sail set the Rockaway would not have stemmed the tide. In this contradictory state of the evidence it seems utterly impossible to say positively what was the cause of the accident; but it does appear to me that this cause was not anything done or improperly left undone by the people of the Countess of Elgin, or by those of the Rockaway at the time of the accident; and that the collision occurred either from the pilot's having so anchored the Rockaway, as to give the Countess of Elgin a foul berth, as asserted in the libel, or from some cause which does not appear from the evidence, but which, whatever it was, the evidence does not lead us to suppose to have been the fault of either vessel. In these two cases the law would be the same, the owners of the Rockaway would not be responsible, and each party bears his own costs. In the case of inscrutable accident foreign jurists appear to have held that the damages should be divided; but this rule has never been adopted in the English Courts, either of law or of Admiralty; it has on the contrary been commented upon and repudiated, and I am of course bound by the English precedents (*a*). Fortunately the damages in this case are very slight. The judgment is therefore that the suit be dismissed, each party paying his own costs.

(*a*) The Catherine, of Dover, Auckland, 6 Notes of Cases, 2 Hagg. 143, 154; The Maid of 240.

Friday 25th October, 1867.

SECRET—DAVISON.

To entitle the owner of a ship, having, by compulsion of law, a pilot on board, to the benefit of exemption from liability for damage, the fault must be exclusively that of the pilot.

Where the accident was attributable to a deficiency of look-out and management on board the vessel doing the damage, and not solely to fault or neglect on the pilot's part, the owner was held liable for the damage.

This was a cause promoted by the owner of the steam-tug Lake St. Peter, against the steamer Secret, for damage caused by the sinking of the Lake St. Peter, in the night of the 8th August last. The following judgment was this day pronounced in the case.

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JUDGMENT.—*Hon. Henry Black, C. B.*

In this case the suit is brought by Edouard Gingras, sole owner and master of the steamer Lake St. Peter, of the burthen of sixty-two tons, a tug steamer used for the purpose of towing vessels and rafts in the river St. Lawrence, against the steamer Secret, of the burthen of 294 tons, owned by Michael Connolly, and whereof William Davison was master, to recover damages sustained by the Lake St. Peter, by a collision which occurred in the night of the 8th of August last, on that part of the river St. Lawrence known as Lake St. Peter. The steamer, Lake St. Peter, left Quebec in the forenoon of that day on a voyage to the Rivière des Prairies behind Montreal, for the purpose of towing a raft from thence to Etchemin, near Quebec, and arrived opposite Port St. Francis, at ten o'clock at night; and having past the light ship at the lower bar of the lake, she had proceeded up the lake a

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few miles, when the two vessels came in sight of each other. The *Secret* had left Montreal the same day, about six o'clock in the afternoon, with part of a general cargo on board, bound and cleared for Quebec, Gaspe, Dalhousie, Miramichi, Shediac, and Pictou,—the four last ports being out of the limits of the late Province of Canada,—and having on board and being in charge of Felix Hamelin, of Montreal, a branch-pilot, duly licensed for and above the harbour of Quebec, as by law required in respect of vessels over 125 tons leaving the port of Montreal for a port out of the said Province. About eleven o'clock that night she was in Lake St. Peter, a short distance above the Pointe du Lac light, and steering towards it, when the persons on board her saw the lights of the steamer, *Lake St. Peter*, coming up the lake. The night was clear, and both vessels had their proper lights up. So far the statements of the witnesses adduced on either side agree. The one vessel being bound down while the other was coming up the channel, they must have been going in opposite directions, and as they saw each other when a mile or two apart, it would seem to have been the duty of each to obey the law in such cases, and to port her helm in order to pass on the other side, which the people of each allege that she did. It was also the duty of each to avoid proceeding at too swift a rate, and the people of the *Secret* allege that their vessel was not, and had not been for some time proceeding at more than half speed. If these vessels were actually meeting end on, or nearly end on, as would seem probable, and each ported her helm in time, it would have been impossible that they could have come into collision; and the question is, therefore, whether they were so meeting, and whether one or both failed to obey the law; or whether in any other way either of them failed to observe the rules of good seamanship, and of the law under the circumstances. On these points the Court, availing itself of the practice adopted

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in England to call in the assistance of professional gentlemen as assessors, has requested the opinion of Captain Ashe, of the Royal Navy, and Captain Armstrong, the Harbour Master of Quebec, and one of the wardens of the Trinity House, two gentlemen whose long experience and professional skill are such as to give indisputable authority to their opinion; and having proposed to them the following questions:—

1. Whether the collision in question occurred from carelessness, mismanagement, or want of proper skill on the part of either and which of the vessels? and,

2. If the collision occurred through the fault of those on board the *Secret*, then, whether the loss or damage was occasioned by the exclusive fault or incapacity of the pilot in charge of that vessel; or by the fault of the master, officers, or crew, or any of them, either by the want of a proper look-out, or by failing to obey the pilot's orders or otherwise?

The Court has received from Captain Ashe and Captain Armstrong their answers in writing, and in the following terms:—

“In answer to the first question, after having well weighed the evidence on both sides, we are of opinion that the steamer *Lake St. Peter* carried out the regulations in exhibiting the lights required by law, and also in having put her helm a port on first seeing the *Secret's* lights, and in sufficient time, as is proved by the distance she ran from the channel (or cut) to where she sunk, and therefore we do not consider her in fault.

“In answer to the second question, it appears that Felix Hamelin, pilot on board the steamer *Secret*, declares in his evidence that from the time they left Montreal he had charge of the steamer, and that all his orders were promptly executed. Therefore he was in error in not porting his helm immediately on seeing the lights of the steamer *Lake St. Peter* on his starboard bow, and bringing

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them on his port bow, but persisted in keeping them on the starboard bow until the period had arrived when it was utterly impossible for any movement of the helm to have prevented the collision ; therefore we are of opinion that he disobeyed the principal rule laid down for the guidance of ships and vessels at night.

“ On the important question of look-out. No doubt the pilot and helmsman, from their elevated position, often see a light even before the look-out man, but this in no way exonerates the ship for not keeping a vigilant look-out, and immediately reporting all lights, &c., to the pilot. It appears that Lavoie was stationed forward as a look-out, but what he saw or did is not known, as he was not brought forward as a witness on the part of the defence ; therefore we are at liberty to suppose Lavoie either did not keep a good look-out, or that he did not see what he might have seen, or if he did see the lights of the Lake St. Peter, he did not report them. Therefore we are of opinion that there was not a proper look-out kept. And further, there was no proper communication between the deck and the engine-room, as the speaking-trumpet was out of order ; and there was no one near the wheel that understood the telegraph. We, therefore, think the ship in fault in not having these necessary adjuncts to a ship's safety in working order and attended to.

“ J. D. ARMSTRONG,

“ E. D. ASHE,

“ Commander R. N.”

The common law of the Admiralty, before the passing of any Statute law on the subject, was that the taking on board a pilot, though he was duly authorised to act as pilot, did not exempt the owners from responsibility for his acts ; and the decisions of this Court were in accordance with this rule until the employment of a pilot was made compulsory by law. And now by an Act

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of the Legislature of Canada (27 & 28 Vict. c. 13, s. 14), adopting the provision contained in the Merchant Shipping Act, "No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any place where the employment of such pilot is compulsory by law." An Act of the same Legislature, passed in the same Session, makes it compulsory on the master or person in charge of each vessel over 125 tons, leaving the port of Montreal for a port out of this Province, to take on board a branch pilot for and above the harbour of Quebec, to conduct such ship, under the penalty mentioned in the Act. The *Secret* came within the operation of this Act, as she was over the burthen of 125 tons; and cleared from Montreal for ports out of the late Province of Canada. But in order to entitle the owner to the benefit of the exemption from liability, the fault must be exclusively that of the pilot; and it must be shown that the order which caused the damage was actually given by the pilot, the owner being responsible to third persons for the obedience of the master and crew to the orders of the pilot in everything that concerns his duty, and for their attention and good conduct in keeping a proper look-out, and informing the pilot of any danger ahead, and in every other respect. If they fail in performing their duty, and damage occurs in consequence, the owner is liable, notwithstanding the vessel is in charge of a pilot. The nautical assessors give it as their opinion that the collision was not occasioned by any fault or neglect on the part of the people belonging to the *Lake St. Peter*, thus negating one of the grounds of defence taken by the owner of the *Secret*, and the Court sees no reason to come to a different conclusion from the evidence in the cause. They are also of opinion that there was not a proper look-out on board the *Secret*. The want of a competent and vigilant look-out exacts in

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all cases from the vessel neglecting it clear and satisfactory proof that the misfortune encountered was in no way attributable to her misconduct in this particular; and this has not been proved. There can be no presumption made in favour of the owner, who could have removed any presumption one way or the other, by calling the look-out-man to prove the fact, and failing to do so he cannot call upon the Court to presume that a proper look-out was kept on board the vessel. No doubt, as stated in a recent decision of the Judicial Committee of the Privy Council, the pilot may and probably does see a craft ahead as soon as any one else on board, but his attention is necessarily directed from time to time, to other matters relating to the navigation of the vessel under his charge, besides keeping a look-out, and on that account it may happen that he does not see an object ahead as soon as he ought to have been made aware of it in order to enable him to take measures to avoid it. Hence arises the necessity of having a man stationed on the forecastle with the special and sole duty of keeping a vigilant look-out. The pilot is continually called to the discharge of duties inconsistent with the keeping of a constant and vigilant watch, and he ought not to be relied upon for that purpose. In such a vessel as the *Secret*, his proper duties would materially interfere with the additional duties of a look-out. For some time before the accident, the pilot of the *Secret* had seen the bright white light at the foremast head of the *Lake St. Peter*; but he did not see either of her coloured lights during the time she continued to the south or on the starboard bow of the *Secret*. "*Je ne pouvais pas voir la lumière rouge du petit steamer,*" he says, "*pendant qu'il était au sud de nous; mais j'aurais pu voir sa lumière verte, cependant je ne l'ai pas vue. Je ne sais à quoi c'est due.*" If the look-out man had reported these lights, and the pilot had been earlier made aware of the position of either of them, he might have

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taken measures to avoid the accident, and we are bound to suppose he would have done so; the movements of a steamer are always under control, her course can be changed at will, and her motion may be checked or even reversed in an incredibly short space of time. Upon the whole case I am of opinion that the accident is attributable to neglect and deficiency of look-out and management on board the Secret, and not solely to fault or negligence on the pilot's part; and that the owner is not entitled to the exemption from liability which the Statute provides. I accordingly pronounce for the damages sued for, and with costs.

*Andrews, Caron, and Andrews, for the Lake St. Peter.
Hearn, for the Secret.*

2nd November, 1869.

MCLEOD—WATTERS.

A vessel, while at anchor in the harbour of Quebec, having been run into and made to start from her anchorage, and to drift down with the tide against other vessels, dismissed on the ground of inevitable accident.

Practice of the Court is not to give costs on either side when a collision has occurred from inevitable accident.

JUDGMENT.—*Hon. Henry Black, C. B.*

McLeod.

Two suits have been brought against the ship *McLeod*, owned by James Martin of Dublin, one by the owners of the ship *Madagascar*, and the other by the owner of the barque *Argo*, to recover compensation for the losses sustained by them, arising out of a collision which occurred on the 17th of May last. The *Argo*, a Norwegian vessel of about 403 tons, English measure, and whereof Andreas Nielson was master, arrived at Quebec, from London, in the afternoon of the 15th of May last, in charge of a licensed pilot, by whom she was safely brought to anchor in that part of the harbour of Quebec known as the upper ballast ground, with her port anchor and sixty fathoms of chain. When she came to anchor there were no vessels near her, and the pilot left her. In the afternoon of the following day, the *Madagascar*, a ship of the burthen of 1336 tons, and whereof Joseph Rochester Brunswick was master, arrived also from London, in charge of Jean Baptiste Damours, a duly licensed pilot, and was by him brought to anchor on the same ballast ground, with her starboard anchor and about seventy-five fathoms of chain. The tide was then ebbing, and the *Madagascar* anchored nearly astern of the *Argo*. Four or five hours after the arrival of the *Madagascar*, the *McLeod*, a vessel of the

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burthen of 1367 tons, and whereof Stuart Watters was master, arrived from Bremen, in charge of Charles Brown, senior, a duly licensed pilot, and was by him brought to anchor on the same ballast ground, with her port anchor, and about eighty-five fathoms of chain. The McLeod lay highest up, and probably about two-thirds of a mile above the Argo, which lay about one-third of a mile above the Madagascar. The wind was easterly, blowing a strong breeze, the weather was hazy, and it rained. In this position the vessels remained during the rest of the ebb, as well as during the following flood. In the course of this time the Argo had, between seven and eight o'clock in the evening, dropped her second or starboard anchor, and from that time remained riding by both anchors, the McLeod and the Madagascar riding by a single anchor. All three ships had the regulation anchor light properly displayed, and each of them had a proper anchor watch set. They all swung without accident to the flood tide between a quarter and half-past eight that night. The tide began to ebb about ten minutes past twelve. It appears that the McLeod swung with her head towards the south shore, while the Argo swung with hers towards the north shore. While the McLeod was across the stream, with her head to the southward, a large black ship, whose name is still unknown, drifted across her bow, and carried away her flying-jibboom, and swinging round, struck the McLeod on the starboard waist, doing some damage, and then cleared. So soon as this occurred, the McLeod's pilot was called, and came on deck. Some ten minutes afterwards the Argo was observed by the McLeod's people on the port bow of the McLeod, which ship is said to have been heading about west-south-west, while the Argo headed about west-north-west; but it appears that it was so very dark, that none but an experienced person could tell what way the ships headed from ten at night until two in the morning, during which time

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it continued blowing a strong gale from the eastward, with occasional heavy squalls. The people of the McLeod say that she was keeping her position, and that the Argo was drifting upon them ; and in support of this hypothesis they assert that the Argo drifted up above the McLeod with the flood tide, and then came down upon them with the first of the ebb. But to this hypothesis there appears to me to be three objections : the first is the positive assertion of the people both of the Madagascar and of the Argo, that the latter never moved ; the second, that the Argo was moored by two anchors, while the McLeod was riding by only one ; and the third, that if the hypothesis was correct, the Argo must have passed the McLeod when drifting upwards, and must have been seen passing by the watch on board the McLeod, if they kept a proper look-out, and it is not even suggested that she was so seen. It would seem also, that so small a vessel as the Argo, with two anchors out, could hardly have carried so large a vessel as the McLeod from her anchorage against the wind at slack tide, and have brought her down upon the Madagascar. The more probable conclusion from the evidence appears to me to be, that the large black ship which struck the McLeod caused her to start from her anchorage, and that she drifted down with the tide against the Argo, and carrying her away, the two vessels drifted together upon the Madagascar. It is certain that the McLeod and the Argo came into collision, and that by this collision both sustained very considerable damage. It is also certain, that while in collision, they both drifted down upon the Madagascar, doing further damage to themselves, and considerable damage to that vessel, carrying her also away from her mooring, the three vessels drifting together for a short time, until the anchors brought them up : and that they remained locked together for some days before they could be cleared. For the damage thus occasioned the present suits have been brought by the owner of the

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Argo and those of the Madagascar against the McLeod. With respect to the Madagascar no blame whatever is imputed to the master or crew of that vessel, by either of the others, as to anything done or omitted on board her before the collision. The Madagascar's people, as well as those of the Argo, assert positively that the Argo's light was observed by them during the whole time before the collision, and that she did not drift from her moorings; and this assertion appears to be borne out by the facts and circumstances proved in the case. Then, with respect to the McLeod, there seems to me to be no reason to doubt that every prudent measure required by the ordinary rules of seamanship had been taken by her people, and in this view the case must be regarded as one of inevitable accident. It becomes, therefore, unnecessary to consider the question of liability or non-liability of her owner, by reason of her being in charge of a licensed pilot at the time of the accident. The suits must be dismissed, but without costs, as the practice has been not to give costs on either side where the collision is the result of inevitable accident (a)

*J. W. & W. Cook, for the Madagascar and the Argo.
Alleyn & Chauveau, Contra.*

(a) *The Itinerant*, 2 W. Rob. 244; *The Rockaway*, 11th July, 1866.

3rd November, 1869.

ORIENTAL—MORRIS.

A vessel in motion is bound to steer clear of one at anchor, and nothing can excuse her doing so but inevitable accident.

The owners, not the pilot, are responsible for the insufficiency of the look-out.

JUDGMENT.—*Hon. Henry Black, C. B.*

ORIENTAL.

This suit is brought by the owner of the Countess of Durham, a barque of the burthen of 298 tons, whereof William Kennedy was master, against the barque Oriental, of the burthen of 668 tons, for damages done by her to the Countess of Durham, by a collision which took place off Patrick's Hole on the River St. Lawrence, about nine miles below Quebec and near the town boundary of the harbour, a little before ten o'clock on the night of the 10th of September last. Both vessels were inward bound, the Countess of Durham from Youghal, in Ireland, and the Oriental from Plymouth, in England. The pilot of the Countess of Durham had brought her to anchor in the evening, and she lay in the channel at the distance of from an eighth to a quarter of a mile from the land on the north side, the Island of Orleans. The side-lights had been removed, and the bright anchor light hoisted in the fore-rigging at the proper height above deck. A proper look-out was kept, and so far as respects the Countess of Durham it is admitted on the record, that the collision in question took place without any fault of the people of that vessel. The night was fine, though not very clear, but distant lights could be plainly seen. At the time of the collision the wind was blowing a moderate breeze from the eastward, or up the river; and the tide was at the

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last quarter of the flood. The Oriental was coming up the river under sail, the intention being that she should be taken to Indian Cove, some miles higher up. She had shortened sail aloft, but her lower sails remained set, and prevented the pilot, master, and man at the wheel from seeing ahead of the vessel. The look-out man on the forecastle was a Prussian of the name of Olto Arense, speaking imperfect English, and whose evidence has been taken through an interpreter; and the man at the wheel was also a foreigner, a Hanoverian, whose evidence was also taken through an interpreter. The people of the Countess of Durham saw the Oriental when she was at least a mile off, about two points on the starboard bow. It is admitted in the preliminary act that the Countess of Durham was first seen by the people of the Oriental at the distance of about a quarter of a mile. A steamer had just before gone down the river, passing the Oriental on her port side. The look-out man says that just as the steamboat passed he saw and reported a white light on the port bow; he could not speak positively as to the distance, but thinks it was about half a mile distant. The man at the wheel and the boatswain say that they heard the look-out man report the light as on the port bow; an apprentice who was aloft says he heard the look-out report a light on their port bow, but the master and mate say the report was "Light a-head;" and the pilot says it was, "Pilot, a steamer a-head!" but that about half a minute afterwards the look-out man reported, "It is not a steamer, it is a bright light a-head." On hearing the first report, the pilot gave the order to port helm, and the Oriental having answered her helm quickly went off to the starboard about two points and a half or three points. On the report of a light a-head, the pilot reversed his order, and put the ship's helm to starboard, the master assisting to carry this order into effect. The master says there was only a moment's interval between

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the putting the helm hard-a-port and the time it was starboarded. The look-out-man and the apprentice say the light when first seen was on the port bow : but in this they appear to have been wrong, all the witnesses from the Countess of Durham stating that they saw the Oriental on their starboard bow, which they could not do, unless their vessel was on the starboard of the Oriental. And the pilot and master of the Countess of Durham state positively that when the Oriental was about four or five cables lengths from them, she showed her green light about two points on their starboard bow, and that if she had continued her course she would have gone clear of them ; but that all at once her helm was ported as if to pass between them and the island, and that seeing that she could not cross their bow without danger of collision, they both called out to her to starboard her helm, which was done, though too late to avoid the collision, the starboard bow of the Oriental striking the starboard bow of the Countess of Durham, doing her considerable damage.

It is clear that there was fault on the part of the Oriental, for the rule is that a vessel in motion is bound to steer clear of a vessel at her moorings, and nothing can excuse her not doing so but unavoidable accident, the *vis major*, which no human skill or precaution could have guarded against ; and the question is whether the collision arose from the sole fault of the pilot in charge of the Oriental, so as to relieve her owners from responsibility, or was wholly or in part occasioned by the fault or neglect of the crew. Now it appears to me that the collision did not arise from any fault or neglect on the part of the pilot of the Oriental, whose orders appear to have been perfectly correct, according to the report, or rather reports, made by the look-out-man, who does not appear to have kept a sufficiently vigilant look-out, or to have reported correctly and in sufficient time the position of the Countess of Durham, which he must have seen clearly and in due

time if his look-out had been as good as that kept on board the Countess of Durham, whose people saw the Oriental about a mile off, and who say that even when the Oriental was a quarter of a mile from them she would have avoided the collision if she was kept on the course she was then steering. Nor does it seem that it was judicious on the part of the Oriental that the man stationed at her look-out should be a foreigner, speaking English imperfectly, and consequently liable to make two reports slowly and incorrectly, and perhaps more or less unintelligibly. It is satisfactory to find that the conclusion to which I have come as to the non-culpability of the pilot, after a very careful consideration of the voluminous evidence on both sides, agrees with that of the master and wardens of the Trinity House of Quebec, on the charge brought before them against the pilot, for having by want of due care and diligence caused the collision in question. The opinion of practical men in a case of this kind, though not binding on the Court, is always of great value, and I am pleased to know that in this instance their judgment coincides with my own. The judgment is therefore in favour of the Countess of Durham for the damages sustained, to be ascertained in the usual manner.

Hearn & Murray, for the Countess of Durham.

J. W. & W. Cook, for the Oriental.

Friday, 2nd December, 1870.

HIBERNIAN—SMITH.

Where a collision was occasioned by the improper steering of a vessel, the exclusive act of the pilot, the owners of the vessel were held entitled to the exemption provided by the stat. 27 & 28 Vict. c. 13, s. 14.

This exemption not affected by the constant employment of the same pilot by the owners.

HIBERNIAN.

This cause originated in a collision which took place between the steam-ship *Hibernian*, while coming down the river St. Lawrence on her homeward voyage from Montreal to Liverpool, and two barges going up the river in tow of the steamer *Canada*, under the circumstances noticed in the following judgment.

JUDGMENT.—*Hon. Henry Black, C. B.*

These suits have been brought against the *Hibernian*, one of the steamers of the Montreal Ocean Steam Ship Company, of the registered burden of 1391 tons, whereof William Henry Smith was master at the time of the accident on which the suits are founded, the one by the Northern Transportation Line, an American company, owners of the two barges, *A. McFarren* and *Dora*, and the other by John Redpath and Company, owners of 2257 bags of sugar, said to be of the value of 22,750 dollars, which were on board the barges at the time of the accident, the barges being on their way from New York to Montreal, to which city they were conveying the sugar. On the 16th of June, 1868, the barges were proceeding up the river St. Lawrence in tow of the steamer *Canada*, which had also six other vessels in tow, as well as the two

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barges, being astern of her ; these vessels and the barges were placed two and two, each two side by side with each other. Nearest to the Canada were two schooners at a distance of from fifty to a hundred feet from her ; then a schooner and a barge at perhaps rather less distance from the first two ; then came at a still shorter distance the A. McFarren and the Walker, another similar barge, side by side, and lashed together, and steered by a steersman at the helm of the Walker, which was on her starboard side, the Walker having gravel on board ; then came the Dora, and a similar barge called the Harmony, also lashed together side by side, and steered by a steersman at the helm of the Harmony, these two barges were a few feet only astern of the A. McFarren and Walker, the Harmony had tar and turpentine on board as freight, and the Dora the sugar. About half-past eleven o'clock in the forenoon, the weather being then clear and calm, they had reached a part of the river a little below Pointe aux Trembles, and near the Isle St. Therese, about twelve miles below Montreal, where the channel is narrow and tortuous, and marked by three buoys. About the same time the Hibernian was coming down the river on her voyage to Liverpool, in charge of the branch pilot, Adolphe Lisée ; when about four or five miles above the shoal, or *batture*, of Point aux Trembles, her people observed the Canada and her tows, coming up the river and distant about three miles ; and the Hibernian must, from her great size, have been seen from the Canada about the same time, indeed the pilot of the Canada says he saw the Hibernian at a greater distance. The vessels were then approaching each other very fast, the Hibernian going with the stream at twelve or thirteen miles an hour, and the Canada coming up against the stream at the rate of about three miles an hour. At the time the Canada was perceived from the Hibernian, the engine of the latter was slowed and the ship went "dead slow," until a little above the second

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buoy in the narrow part of the channel and close to the point at which the accident occurred, when it is asserted that it was necessary to go at full speed for about half a minute, so as to round that buoy quickly, which was accordingly done. The people of the Canada do not appear to have either stopped or slowed their engine on seeing the Hibernian: they say that the channel was from 300 to 400 feet wide; that they kept to the north side of it,—which was their proper side,—and as far to that side as they could safely go; and that the Hibernian could have easily passed without touching them: but this is denied by the Hibernian's people, who say that they were as far to the south side of the channel as they could go, without danger of running ashore, the Hibernian drawing at the time nearly twenty-one feet aft, and that the Canada and her tows,—as neither she nor any of them drew more than ten feet,—could have safely gone much further to the northward, and passed without accident. About twelve or fifteen minutes after the vessels first saw each other they came into collision; the Hibernian passed the Canada and the first four vessels which she had in tow (two and two), but struck the A. McFarren, which was lashed to the Walker, and then struck the Dora, both vessels being struck on the port bow. The Dora sank immediately, and the A. McFarren in about seven or eight minutes after the collision. The master of the Dora was drowned. The Hibernian passed on into the open channel of the river, but as soon as possible slowed and sent her boat back to assist in saving the crew of the barges and in giving whatever help they could. The barges were afterwards raised, and Kingsley, one of the hands on board the A. McFarren at the time of the accident, and who was one of those engaged in the work of raising them, states, in his evidence, that they were found lying in between sixteen and twenty feet of water, but that shallow water was close by. He says also that

he does not know at what distance the sunken barges were from the shore, but that he knows they were 561 feet from the buoy placed on the south side of the channel, because he measured the distance, but he does not say in what direction, whether at right angles to the course of the channel or diagonally. He did not measure the distance from the north shore, but at a rough guess he thinks they were two hundred feet from the island.

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Each of the parties charges the other with negligence and with want of proper skill and care ; and the owners of the Hibernian further allege that even if there had been any fault on the part of that vessel, which they deny, yet that they would not be liable, inasmuch as she was in charge of a duly licensed branch pilot for and above the harbour of Quebec, as by law required, and whose orders were exactly obeyed and carried out by her officers and crew ; who were sufficiently numerous, and in every respect well qualified, the ship being in perfect order and thoroughly found and equipped. In answer to this, the opposite parties say that the Montreal Ocean Steamship Company, owners of the Hibernian, were not at the time of the accident under any legal obligation to take the pilot, Adolphe Lisée, to conduct their vessel, but were by law allowed to choose from among the duly licensed branch pilots, their own pilots to be exclusively employed by them in piloting the ships of the company ; and that the pilots so employed by them are their servants, for whose acts they are responsible. The owners of the Hibernian deny the validity of this plea, at the same time that they allege that there was no fault on the part of Adolphe Lisée, and that the sole responsibility for the accident rests with the opposite parties, who might have avoided all risk of collision by proper care and precaution, and more especially by stopping below Eagle Island when they first saw the Hibernian, or by keeping further to the north or starboard side of the channel, or by passing

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on the south side of Eagle Island, any of which courses they say could easily have been taken.

The liability or non-liability of the owners of the *Hibernian* for any fault on the part of Adolphe Lisée, under the circumstances of the present case, is a purely legal question for the Court to determine, and it might have been determined at any earlier stage of the proceedings if the admission of the pleading by which the question is raised had been objected to. It is right that I should dispose of it in the first instance. The rule has always been that if it be compulsory on the vessel to take a pilot, and *à fortiori* if this obligation be enforced by a penalty, then neither the owner nor the master will be liable for injury occasioned by the fault or incapacity of the pilot; and this rule is and was at the time of the collision part of the statute law upon the subject. The question then is whether this rule is affected by the fact of the pilots having been selected by the owners of a vessel, and constantly or frequently employed by them in piloting their vessels; and whether he may be on this account considered rather as a servant voluntarily engaged by them, than as an ordinary pilot taken under the compulsory provisions of the law. The question has fortunately for us arisen in England, and has been decided by the High Court of Admiralty in the case of the *Batavia*. In this case it was held that the exemption from liability under the Pilot Act was not taken away from the owners of the damaging vessel by the constant employment of the same pilot to pilot their vessel up and down the River Thames for a period of fifteen years. Dr. Lushington, in pronouncing judgment, said that the contrary position would be highly detrimental to the interests of navigation, and he considered it highly advantageous, not only to the owners of vessels, but to the public at large, that the same pilot should be constantly employed on board a vessel, inasmuch as he becomes

thereby well acquainted with the master and crew, and is consequently more likely to conduct the vessel amicably and properly. I not only feel bound by this decision as a precedent, but I agree perfectly in the opinion expressed in it. I may further remark that the Act of 1864, relating to the Trinity House of Montreal, expressly recognises the right of ship-masters and others requiring branch pilots to select such of them as they may think fit, other than those engaged to pilot the Ocean Mail Steamers, or any of them. The master is bound to take a qualified pilot, under a penalty, though he may select from such as are qualified; the case would be different if it were optional with him to take or not to take a branch pilot at his pleasure.

The question whether the accident was or was not occasioned solely and exclusively by the fault of the pilot, as well as the other questions of fact in the case, are of a purely nautical and technical character, and in considering them the Court will therefore avail itself of the practical experience and professional skill of Captain Armstrong, harbour master of Quebec, and of Captain Ashe of the Royal Navy, superintendent of the Observatory at Quebec. The case is either one in which there is plainly no fault on either side, or in which there must have been fault which cannot be specifically ascertained and assigned, or in which the fault not only exists, but can be ascertained; and this last head is sub-divided into the cases in which both parties are to blame, and those in which the party inflicting the injury or the suffering party is alone in fault. These questions must be determined by reference to the rules of navigation and seamanship as applied to the facts disclosed in the evidence in the cause. The questions submitted to the gentlemen by whom the Court is assisted, will, therefore, be the following: 1. Whether the accident arose from unavoidable circumstances, without fault being attributable to any of the vessels or their

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people, or proceeded from the fault of any of the vessels or their people ; and if so, then from the fault of which of them. 2. Could the Hibernian, a screw steamer, coming with the current, when the Canada and her tows were first seen, have stopped and allowed them to pass above the narrow portion of the channel before proceeding further, without danger to herself ; and if she could, ought she to have done so in order to be free from blame ? 3. Could the Hibernian have safely passed further to the south, and if she could, ought she to have done so in order to be free from blame, or did she neglect any precaution which she was bound to observe in order to avoid the collision. 4. If there was any fault on the part of the Hibernian, was it attributable solely and exclusively to the pilot, or did it arise from any neglect or want of skill on the part of her officers or crew. 5. Could the Canada, a paddle-wheel steamer, going against the current, when the Hibernian was first seen from her, have safely remained where she was until the Hibernian had passed her ; and if she could, ought she to have done so in order to be free from blame. 6. Could the Canada and her tows have safely gone further to the north side of the channel, or on the other side of Eagle Island ; or, if she could have safely done either, ought she to have done so, in order to be free from blame. 7. Was it sufficient for the proper management of the A. McFarren and the Dora, that they should be steered by the helms of the barges to which they were respectively attached ; or was it necessary that each of them should have had a steersman ; and was the accident in any way attributable to the want of such steersman ? 8. Did the collision arise from any other fault of the Canada, the barges, or their people, or any error on their part by reason whereof they are not free from blame.

The assessors having heard the whole of the arguments

of counsel and read the evidence, have given in writing an opinion to the following effect :—

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“ No. 1. That the collision did not arise from unavoidable circumstances. It appears to us that the barges were sunk without any fault or defect attributable to them, or their crews, or to the Canada by which they were towed, and the blame rests with the Hibernian alone.

“ No. 2. When the Canada and her tows were first seen by the Hibernian, she might, without danger to herself, have stopped, and allowed the Canada and her tows, to pass above the narrow part of the channel; but we do not think that it was necessary for her to have done so.

“ No. 3. That the Hibernian could have safely passed further to the south, and should have done so, by porting her helm at the proper time.

“ No. 4. The collision did not arise from any fault of the officers or crew of the Hibernian, but solely and exclusively from that of her pilot.

“ No. 5. The Canada could have safely remained where she was, when the Hibernian was first seen from her, until that vessel had passed; but we are of opinion that there was no necessity for doing so, as there was room for them to pass each other.

“ No. 6. That the Canada could not have safely gone further to the north side of the channel, as one of her tows, by porting her helm to avoid collision, ran ashore. The south of Eagle Island is never taken by steamers having vessels in tow.

“ No. 7. That when two barges are lashed together, and having only two ropes of six feet in length, one helmsman is enough for both barges: and that the collision was in no way attributable to the want of a helmsman in each barge.

“ No. 8. The Canada, her tows, and their crews, are not to blame for the collision, as it is known that a tug-steamer with so many vessels in tow cannot alter her

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course readily. The Hibernian having seen her so far off, ought to have known this, and taken proper precautions in time to prevent a collision.

"J. D. ARMSTRONG, Harbour Master.

"E. D. ASHE, Commander, R. N."

Captain Armstrong and Captain Ashe exempt the master and crew of the Hibernian from blame, and attribute the fault which gave occasion to the damage to the pilot. Concurring in this opinion, I must dismiss the owners of the Hibernian from this suit, solely upon the ground that the master was bound to take a pilot on board, and place him in charge in conformity with the requirements of the law; and the collision having been occasioned entirely by the fault of that pilot the owners are entitled to exemption from liability (a).

Holt, Irvine, and Pemberton for Promoters.

J. W. and W. Cook for Hibernian.

(a) This judgment was affirmed in the Privy Council on the 3rd Dec. 1872. Present:—Sir James William Colville, Sir Robert Phillimore (Judge of the High Court of Admiralty), Sir Barnes Peacock, Sir Montague Edward Smith, and Sir Robert Porrett Collier. The following is a summary of the decision:—

"The Canadian statute, 27 & 28 Vict. c. 13, intituled, 'An Act to amend the Laws respecting the Navigation of Canadian Waters,' enacts, by sect. 14, that 'No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge

of such ship within any place where the employment of such pilot is compulsory by law;' and the Canadian statute, 27 & 28 Vict. c. 58, s. 9, enacts, that 'The master or person in charge of each vessel exceeding 125 tons, coming from a port out of the Province of Quebec, and leaving the port of Quebec for Montreal, shall take on board a branch pilot, for and above the harbour of Quebec, to conduct such vessel, under a penalty equal in amount to the pilotage of the vessel, which penalty shall go to the Decayed Pilot Fund.' Held, on appeal, affirming the judgment of the Vice-Admiralty Court of Lower Canada, in a cause of damage by collision, that these

statutes are to be read and construed together as being *in pari materiâ*, constituting a compulsory pilotage, and exonerating the owner of a vessel, having such pilot on board, from liability for damage inflicted on another vessel."

"Where a statute inflicts a

penalty for not doing an act provided for, the penalty enacted implies that there is a legal compulsion to do the act in question, and this principle is not affected by the fact that the penalty has a particular destination. 4 L. R. P. C. A. 511.

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Thursday, 5th July, 1871.

GERMANY—GRAHAM.
CITY OF QUEBEC—CONNELL.

The fault of one vessel will not excuse any want of care, diligence, or skill in another, so as to exempt her from sharing the loss or damage.

When both ships are in fault the Admiralty law divided the damages of the owners of the ships.

This rule is now qualified by the Act respecting the navigation of Canadian waters, which agrees exactly with the 298th sect. of the Merchant Shipping Act.

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These were cross actions in respect of a collision which took place on the first of May, 1870, off Green Island, in the river St. Lawrence, between the steamer City of Quebec, owned by the Quebec and Gulf Ports Steamship Company, and the Germany, one of the steamers of the Montreal Ocean Steamship Company, in consequence of which collision the City of Quebec was so much damaged that she shortly afterwards sunk, and the Germany also sustained damage from the sponson beam of the City of Quebec having penetrated her starboard bow. The circumstances under which the collision occurred are noticed in the following judgment of the Court.

JUDGMENT.—*Hon. Henry Black, C.B.*

The collision out of which these suits arise took place about a quarter past three o'clock in the morning of the first of May, 1870, nearly abreast of the upper or western end of Green Island, in the river St. Lawrence. It was not daylight, but the weather was clear and calm, the lights on Green Island, Red Island, and the Brandy Pots were all visible from both vessels : upon these points there

is no controversy. The City of Québec, an iron paddle-wheel steamer of about 522 tons burthen, under the command of Thomas Connell, well found, equipped and manned, had sailed from Quebec at four o'clock in the afternoon of the previous day, with passengers and cargo, on a voyage to Pictou and the intermediate ports. Connell, the master, was a licensed pilot for the river St. Lawrence below Quebec, but was at the time employed by the owners of the City of Quebec as master, and not as pilot of that vessel. He had gone round the deck shortly before the collision, and finding everything right, and seeing nothing indicating the approach of any vessel, had gone into his room to refresh himself by washing. Very soon after this Joseph Dupins, the second mate, whom he had left in charge with instructions as to the course to be steered, and with orders to call him if anything occurred, rapped at his door and told him that he saw a vessel coming up, and saw her red light. Dupins states that before calling the master he had ordered the helm to be ported. The master says he came out as soon as possible, and stood close in front of the wheel, when he perceived a vessel's red light on the City of Quebec's port bow, about half a point to the north, and about eight times her length from him, which as he says the Germany was about three hundred feet long, would make about half-a-mile. The tide was flowing, and the Germany was coming up the river at the rate of about ten or eleven knots, while the City of Quebec was going down at the rate of nine-and-a-half or ten knots; so that the vessels would be approaching each other at the rate of nearly twenty knots an hour, or half-a-mile in a minute and a half. He immediately ordered the man at the helm to port, which he did, and the ship answered her helm. Finding the Germany coming very fast upon him, he gave the order "hard-a-port," which order was obeyed and ship answered. He says he hailed the Germany to

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put her helm to port, but received no answer; in a second or less afterwards, he says, the Germany's cut-water was over his paddle-box, and he had just time to jump off it to avoid being wounded. The two vessels sides then came together, the starboard bow of the Germany coming into contact with the port sponson beam of the City of Quebec, which penetrated the starboard bow of the Germany about four feet; it seems to have been afterwards broken off about four feet further, the City of Quebec appearing to have been supported by it until she sunk when the sponsor beam was left about four feet inside, and about as much of it projecting outside of the Germany's bow. The City of Quebec sank about twenty minutes after the collision, but her passengers and crew were all saved except one. Connell says that when he left the deck in charge of the second mate, the City of Quebec was steering north-east-by-east, which is the correct course at the place for vessels going down the river, that is, from the Brandy Pots to Green Island light. When he was called and first perceived the Germany, the course of the City of Quebec had been altered about a point and a half from the course before mentioned: and when the Germany struck her, the City of Quebec was running about six points to the southward of the north-east-by-east course. The collision, he says, must have forced the City of Quebec four or five points more to the west, but he did not pay attention as he was busy saving the passengers. He says that a minute or a little more may have elapsed between the moment when he saw the red light of the Germany and the collision. The statements of Joseph Dupins, the second mate, and of Narcisse Colin, the look-out-man, corroborated those of Connell the master; and François Proulx, the man at the helm, though he does not appear to have seen the lights of the Germany, says, that after the first order given by Dupins to port the helm, the City of Quebec inclined about a

point towards the south, and about another point after the second order of Dupin's, and still further after the master's first order; and that after the master's order, "hard-a-port," the City of Quebec inclined five or six points further towards the south; and that it was when in this position that she was struck by the Germany. He adds that the City of Quebec had varied her course about eight points between the time when the Germany was first seen and the time of the collision.

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The Germany, a screw steamer of the burthen of about 2070 tons, under the command of John Graham, the master, was on her voyage from Liverpool to Quebec and Montreal, having a general cargo, and about 900 passengers on board. She was well found, equipped and manned, and had taken a branch pilot, Hubert Raymond, on board, at Father Point, under whose charge she was at the time of the collision, and for some time before it, that is, from the time of his coming on board. The pilot was on the bridge directing the course of the steamer when the City of Quebec was first seen. There was a full watch on deck, consisting of Reginald Barrett, the second officer, James Green, the fourth officer, who was on the bow at the ship's compass, two look-out-men, one on each bow, Christopher Callister, one of the quartermasters of the vessel at the wheel, with two others to assist him, and several others. They agree in saying that they passed Green Island light a few minutes after 3 A.M., and that shortly afterwards, it may have been a quarter of an hour before the collision, they sighted a white light, which the pilot said was that of a vessel coming down the river, and which must have been about nine miles off when they saw it first. They say the light when first sighted was about two points to starboard of the Germany. One of the look-out-men reported the light, and the pilot and second officer saw it about the same time. They say that when this light was about five or six miles off, and about

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three points on the Germany's starboard hand, they saw also the red and green lights simultaneously with the masthead or white light for a very short time, not more than a minute. The red light was then shut in, and they could only see the green light and her masthead light; and that these lights eventually turned out to be those of the City of Quebec. They agree with the people of the City of Quebec as to the place in the river where the vessels then were; and that the weather was clear and calm, and that there was room enough. They say that when they first saw the City of Quebec her lights were distinctly seen to the north of the Brandy Pots' light, that the two vessels appeared to be running on parallel courses, and that if they continued on the same courses they would have passed about a mile or a mile and a quarter from each other, passing each other on the starboard side. The Germany continued on the same south-west-half-west, and that when they again saw the red light of the City of Quebec, she must have been over half a mile above the Germany, and about six points on her starboard bow, and that she must have altered her course at least four points, or they could not have seen her red light; that she seemed to be steering as if approaching the Germany, but still rounding to; and that when she came a-beam of the Germany her red light only was visible, and she appeared to approach the Germany, and that they did not see her green light after she had altered her course as above stated. The second officer says that when the City of Quebec was about two or three hundred feet from the Germany, he ordered the engine to be stopped, and finding the vessels still approaching each other, he ordered it to be reversed. Everything he did was done by direction of the pilot, who, immediately after the order to reverse, sung out to the man at the wheel, "Starboard!" About a minute after the last order the collision took place. He does not think the Germany deviated half a point from

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her course from the time the order to starboard was given to the time of the collision: this he attributes to the engine having been reversed, which affects the influence of the helm on the vessel. He says that the collision took place by the port sponson beam of the City of Quebec coming into contact with the Germany's starboard bow, and penetrating it about twelve feet; that this and the forestay of the City of Quebec overlaying the Germany's jib-boom, helped to keep the City of Quebec afloat; and that, when the sponson beam broke, the City of Quebec sank, about twenty minutes after the collision. It may be observed that the Germany's people all assert that the City of Quebec, from the time they saw her first until the collision, was always on the Germany's starboard hand, and that if the helm of the latter had been ported, it would only have had the effect of bringing them into contact more nearly at right angles. It is urged also that even supposing the order to starboard to have been wrong, it was given in a moment of excitement and alarm, caused by the alleged fault of the City of Quebec.

It will be seen therefore that the assertions of the people of the two vessels, as regards their relative positions at the time each was first seen from the other, are, as is usual in such cases, directly opposite. If the assertions of the people of the City of Quebec are correct, the vessels were proceeding on directly opposite courses, or end on, and so that if they had continued on the same they must have met, and the City of Quebec obeyed the statutory rule in such case by porting her helm, and endeavouring to pass on the port side. If, on the other hand, the people of the Germany are to be believed, the vessels when first seen by each other were on parallel courses, but so far on each other's starboard, that if they had continued the same courses, they would have passed clear of each other, so that the rule cited was not applicable, and the City of Quebec ought not to have altered

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her course, but to have passed the *Germany* (as it is asserted she had ample room to do) on the starboard side. The evidence being thus directly contradictory, leaves me no satisfactory ground for saying which of the vessels was in the right; and the evidence given by the two gentlemen, Mr. Coker, Lloyd's surveyor for the port of Quebec, and Captain Dick, now the port warden of the harbour of Quebec, does not help me much; for they differ from Captain Davidson and Mr. Finnegan, as to the direction in which the blow must have come, the gentleman first named thinking, from the position of the sponson beam, that the blow must have come from aft forward, and the two last inferring from the same circumstance that it came from forward aft. Either may be right, and the first position of the beam after the collision may have been altered by the vessel's swinging more nearly parallel before the beam broke, or the *City of Quebec* sank.

In this state of conflicting testimony upon technical points of a purely nautical nature, the Court has no other alternative than to be guided by the opinion of practical and experienced seamen, on whose judgment and impartiality reliance may be confidently placed, as to which of the statements in question is probably correct, making due allowance for the bias which the majority of witnesses have in favour of their own ships, and whether either or both of the ships was or were in fault, and if such fault lay with the *Germany*, whether it was solely and exclusively attributable to the pilot, or whether the officers and crew were in any and what way culpable. The *City of Quebec* having had no other pilot than the master, the last-mentioned question does not occur in her case, Captain Connell having the command of the vessel, and being continually liable to be called to the discharge of duties inconsistent with that of pilot, cannot be considered as a pilot, so as to relieve the owners from liability.

The nautical assessors appointed by the Court in this case, Captain Armstrong and Commander Ashe, R. N., having examined the evidence, and heard the arguments in the case, are of opinion as follows :—

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“ Our opinion is, after the most careful examination of the case, that from the time the lights on the Germany were first seen by the City of Quebec, until the collision, the City of Quebec was always on the starboard bow of the Germany, and not on her port bow, as supposed by the City of Quebec, and the red light of the Germany could not have been seen, as stated in their evidence. Had she been on the port bow, then porting her helm as she did, no collision could have taken place ; and the pilot of the Ancaster states that when steering south-west-by-west, he saw the lights of the Germany three-quarters of a point on his port bow, and the light of the City of Quebec a point and a half on his starboard bow,—the Germany then steering south-west-by-west-half-west. From the statement of those on board the Germany, and more particularly of the pilot himself, that the red light of the City of Quebec was seen from the Germany one quarter, or half a mile off, we are of opinion that the helm of the Germany should at once have been put ‘hard a-port,’ instead of waiting until it was too late to prevent the accident, when she put her helm ‘a-starboard ;’ and we are confirmed in this opinion by the evidence of the pilot himself, in which he says, ‘Had I not taken the City of Quebec for a tug-boat, I would have stopped the Germany, and no collision would have taken place.’

“ We are further of opinion that when the City of Quebec saw that the Germany persisted in keeping her course, she was wrong in not stopping and reversing her engines. As the pilot of the Germany had all his orders obeyed, and as there was also a good look-out, he only was to blame for not porting his helm when the red light was seen on his starboard bow.”

GERMANY,
CITY
OF QUEBEC.

It is an established principle, in cases of collision, that the fault of one vessel will not excuse any want of care, diligence, or skill in another, so as to exempt her from sharing the loss and damage. Where both parties are mutually blameable, the Courts of Admiralty, adhering to the ancient maritime law, would have apportioned the damages equally between the respective owners of the vessels; but by the Act now in force respecting the navigation of Canadian waters, 31 Vict, c. 58, s. 6, which agrees exactly with the 298th section of the Merchant Shipping Act (a), the owners of the *Germany*, which contravened the rules prescribed by the second section of the Act, are precluded from recovering any portion of their damage from the owners of the *City of Quebec*. This is the construction put upon the Merchant Shipping Act by the Judicial Committee of the Privy Council (b), and is, of course, the only construction to be put upon the corresponding enactment of the Canadian Parliament. And the *Germany* being at the time of the collision in charge of a licensed pilot, compulsorily taken on board and put in charge, and her manœuvres having been directed by him, her owners would not be liable even if the fault had been solely with her (c). Both actions must, therefore, be dismissed, but without giving costs on either side.

Frederick Andrews, Q.C., Hon. Ulric J. Tessico, Adolphe P. Caron, and Frederick William Andrews for the Quebec and Gulf Ports Steamship Company.

John W. Cook and William Cook, for owners of the *Germany*.

(a) 17 & 18 Vict. c. 104, s. 298 P. C. C. 162.
(Imperial). (c) 31 Vict. c. 58, s. 14 (Canadian).
(b) *The James*, 10 Moore's

15th September, 1871.

SAMUEL GILBERT. ———.

A foreign vessel illegally fishing in British waters within three miles of the coast of Canada, and not navigated according to the laws of the United Kingdom, or of Canada, and not having a license to fish; contrary to the provisions of the Canadian Acts of Parliament, 31 Vict. c. 61, and 33 Vict. c. 15, declared to be forfeited.

BEFORE *Hon. Henry Black, C.B.*

The Honorable Sir John Alexander Macdonald, Knight Commander of the Most Honorable Order of the Bath, Attorney-General of our Sovereign Lady the Queen for the Dominion of Canada, who, for our said Lady the Queen, prosecutes, in this behalf, against the ship or vessel called the Samuel Gilbert, and the tackle, rigging, apparel, furniture, stores, and cargo thereof, seized by Napoleon Lavoie, commanding the Dominion armed schooner *La Canadienne*, and Fishery Officer, as liable to forfeiture, and against all persons in general having, or pretending to have, any right, title, or interest therein.

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In pain of parties cited not appearing, Her Majesty's said Attorney-General returned the monition duly executed, and referred to the affidavit of Napoleon Lavoie, Fishery Officer, on board of the vessel called *La Canadienne*, belonging to and in the service of the government of Canada, and employed in the service of protecting the Fisheries, the seizor, heretofore exhibited and remaining in the registry of this Court. The Judge, at petition of the said Attorney-General, having heard the said affidavit read, on motion of counsel, on behalf of Her Majesty, by interlocutory decree, pronounced the said ship or vessel,

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GILBERT.

Samuel Gilbert, to have been at the time of the seizure thereof, on the twenty-fourth day of July now last past, found illegally fishing (in British waters), within three marine miles of a coast of Canada in Her Majesty's dominions in America, at the place called Parrot Island, on the north side of the Gulf of St. Lawrence, about two miles north-west-by-west from the island, and within a distance of two miles and three-quarters from the shore and coast, not included within the limits specified and described in the first article of the Convention between His late Majesty King George the Third, and the United States of America, made and signed at London on the twentieth day of October, 1818; the said ship or vessel, when so found fishing as aforesaid, being a foreign ship or vessel, not navigated according to the laws of the United Kingdom or of Canada, and not having a license so to fish; contrary to the provisions of the Acts of Parliament of Canada (31 Vict. c. 61, and 33 Vict. c. 15), and as such or otherwise subject and liable to forfeiture, and condemned the said ship or vessel, called the Samuel Gilbert, and the tackle, rigging, apparel, furniture, stores, and cargo thereof as forfeited to our said Lady the Queen accordingly.

'21st May, 1872.

FRANKLIN S. SCHENCK.

A claim for a schooner, being a foreign vessel, and cargo rejected, and forfeiture of them declared for fishing in Canadian waters contrary to the Fishery Laws.

BEFORE *Hon. Henry Black, C.B.*

FRANKLIN
S. SCHENCK.

The Honorable Sir John Alexander Macdonald, Knight Commander of the most Honorable Order of the Bath, Attorney-General of our Sovereign Lady the Queen for the Dominion of Canada, who, for our said Lady the Queen, prosecutor, in this behalf, against the schooner or vessel called the Franklin S. Schenck, her tackle, rigging, apparel, furniture, stores, and cargo, seized, as liable to forfeiture, by Daniel Marshall Browne, Esquire, Fishery Officer, on board of the vessel called the New England, belonging to and in the service of the government of Canada, and employed in the service of protecting the Fisheries; and against James Williams Bradley and William Hooper Bradley, the younger, of Rockport, in the State of Massachusetts, one of the United States of America, merchants, and Marion Grimes, of the City of New York, in the State of New York, merchant, intervening, and claiming the said schooner or vessel and cargo.

The Honorable George Irvine, Her Majesty's Solicitor-General for the Province of Quebec, for the said Attorney-General, prayed the Judge to reject the claim of the said James Williams Bradley, William Hooper Bradley, and Marion Grimes, for the said schooner or vessel and cargo, and to pronounce that he had fully proved the contents of

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the libel by him given in and admitted in this cause, on behalf of our Sovereign Lady the Queen, and the said schooner or vessel and cargo to have been, at the time of the seizure thereof, subject and liable to forfeiture and condemnation, and to condemn the same as forfeited to our Sovereign Lady the Queen ; and further to condemn the said James Williams Bradley, William Hooper Bradley, and Marion Grimes in costs. Crawford Lindsay, Esquire, on behalf of the said James Williams Bradley, William Hooper Bradley, and Marion Grimes, prayed the Judge to admit the said claim, to pronounce that the said Attorney-General had failed in proof of the said libel, and that the said schooner or vessel and cargo be restored and delivered up to them.

The Judge, having heard the proofs read, and counsel on both sides, rejected the claim of the said James Williams Bradley, William Hooper Bradley, and Marion Grimes for the said schooner or vessel and cargo, by interlocutory decree pronounced that the said Attorney-General had sufficiently proved the contents of the said libel given in and admitted in this cause on behalf of our Sovereign Lady the Queen, and the said schooner or vessel to have been, at the time of the seizure thereof, on the sixteenth day of August now last past, found illegally fishing (in British Waters) in the roadstead of Paspebiac, in the Bay of Chalans, and within three marine miles from the shore at the said place called Paspebiac in the county of Bonaventure, in the Province of Quebec and Dominion of Canada ; the said schooner or vessel, when so found fishing as aforesaid, being a foreign vessel, and not having a license so to fish, contrary to the provisions of the statutes respecting fishing by foreign vessels, and as such or otherwise, subject and liable to forfeiture and condemnation, and condemned the said schooner or vessel, and the tackle, rigging, apparel, furniture, stores, and cargo thereof, as forfeited to our said Lady the Queen

accordingly. The Judge, moreover, condemned the said James Williams Bradley, William Hooper Bradley, and Marion Grimes, and the bail given in their behalf, in the costs occasioned by their said claim.

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S. SCHENCK.

15th July, 1872.

TORNADO—CRAWFORD.

Collision by two vessels while sailing, one on the starboard tack, close to the wind, and the other on the port tack: *Held*, that the latter was to blame for not porting her helm in time, and that the former complied with the rule of the road by keeping on a wind close hauled.

JUDGMENT.—*Hon. Henry Black, C.B.*

TORNADO.

This is a cause of damage instituted by the owners of the Norwegian barque *Bestemor* against the British ship the *Tornado*, for the recovery of damages by reason of a collision, which took place between the *Bestemor* and the *Tornado*, on the 3rd of May, in the Gulf of St. Lawrence off the coast of Newfoundland.

The *Bestemor* is a vessel of 456 tons register, and was then on a voyage from the port of Stavanger, in Norway, from which she had sailed on the 21st of March, in ballast, bound for Chatham, in New Brunswick. The *Tornado*, a vessel of 1,097 tons register, had sailed from Greenock, in Scotland, on the 27th of the same month, with a cargo of coals and pig iron, bound for the port of Quebec. The collision occurred between eight and nine o'clock at night. Both vessels had the usual regulation coloured lights exhibited and burning. The weather appears to have been cloudy, but the vessels plainly in sight of each other, the wind being from the south, or, as the people of the *Tornado* represent, south-by-west.

The case of the *Bestemor* is, that between eight and nine o'clock P.M., of the 3rd of May last, the wind was blowing fresh from the south, and the *Bestemor*, under her lower topsails, main mizen and fore-topmast stay-sails,

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was sailing on the starboard tack, close to the wind, heading east-south-east; the master and all hands were on deck, and a good watch was being maintained, when the green light of the Tornado was observed on the lee bow of the Bestemor at a distance of about three miles. The Tornado approached the Bestemor, sailing on her port tack, and, as far as the people of the Bestemor could make out, heading to the west-south-west. As the vessels continued to approach each other the master of the Bestemor ordered her helm to be kept a-port, to put the vessel as close to the wind as she could lie, and during the whole of the time which elapsed from seeing the light to the time of the collision, the Bestemor was as close to the wind as she could lie. As the vessels neared each other, the mate of the Bestemor hailed the other ship to put their helm hard-a-port, but got no answer, and shortly afterwards the Tornado struck the port bow of the Bestemor, doing her great injury, and carrying away her bowsprit, three masts, best bower anchor, rigging, sails, smashing the long boat, and doing further damage to the hull of the Bestemor to such an extent that she was wholly disabled and rendered unmanageable. The collision was wholly occasioned by the improper navigation of the Tornado, and by the negligence or default of those on board of her, in not having kept clear of the Bestemor by porting their helm in time as by law, and the usage of mariners, it is alleged they were bound to have done; and the same is not in any sort imputable to the Bestemor, or to any person or persons on board her, who all did the utmost in their power to avoid and prevent such collision. It is also alleged that after the collision the Tornado and her people went off without taking the slightest trouble to ascertain, and seemed not to care what peril the people of the Bestemor were in, or what damage she had sustained.

The owners of the Tornado, on the other hand, allege, that on the 3rd of May last, at about eight o'clock in the

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evening, the Tornado was on the port tack, heading about west-by-south, under fore and main topsails, double-reefed mizen topsails and reefed topsail, fore-topmast-sail, and mizen stay-sail, going about three knots an hour. The wind was south by west, a strong and increasing gale, dark cloudy weather. Her lights were burning brightly, as they had been since before sunset. The master, first mate, second mate, carpenter, boatswain, and the star-board watch were on deck, and a good look-out was kept. As the Tornado was then standing to the west by south, the Bestemor was observed about one mile ahead on the port bow of the Tornado. When first observed, the Bestemor was in the act of wearing, and she wore round coming to the wind on the starboard tack, showing her red light, and heading about south-east-by-east. The master of the Tornado immediately ordered the helm of his ship to be put hard-a-port to go to leeward of the Bestemor, which order was at once obeyed. The after-yards were squared in to assist the ship in paying off. The Tornado's head paid off very fast until apparently clear of the Bestemor; the port light of the latter being well on the port bow of the Tornado. The Bestemor again seemed to keep off the wind, opening both her lights, and bearing down on the Tornado, struck her on the fore part of the port cathead, stern on, and then dropped astern clear of the Tornado, leaving the last-mentioned ship considerably damaged. The master of the Tornado then caused the boats to be cleared away, and wore his ship round to the eastward as soon as possible, and steered back towards the Bestemor to render her all assistance on his part, but could not find the Bestemor, the night being dark with a fresh gale. The Tornado in wearing, it is alleged, was carried too far to leeward to be able to find the Bestemor. The owners of the Tornado then own that the collision was wholly caused by the improper navigation of the Bestemor, and by the negli-

gence or default of those on board her, and was in no degree occasioned by those on board the Tornado.

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There is no doubt that the ships had the wind on opposite sides; the Bestemor was close-hauled on the star-board tack, and the Tornado was close-hauled on the port-tack. It was, therefore, the duty of the Tornado to get out of the way, and it is asserted that timely and proper measures were taken for that purpose, but that the Bestemor was not kept close-hauled up to the wind, as close as she could be, and that she was allowed to fall off from the wind. This seems to be the only question in the case. The opinion of the Court will be founded chiefly on the nautical evidence, and it is with great pleasure that the Court can refer to gentlemen of the experience and knowledge upon these points of Captain Armstrong and Commander Ashe, R.N. The question for their consideration is, which of the two vessels was to blame for the collision which has occurred, or whether they were both to blame on the same account. They have examined the evidence, and being present at the hearing of the cause as assessors to the Bench, their opinion upon the facts deposed to is to the following effect:—

“ We are of opinion that the collision took place by the Tornado not porting her helm in sufficient time, and that the Bestemor complied with the rules of the road, by keeping on a wind, close-hauled; and by her hailing the Tornado she showed that they were all on the look-out. The fact of the Tornado squaring her after-yards immediately after porting her helm shows conclusively, that they allowed themselves to approach too close before taking measures to pass to leeward of the Bestemor: for no sailor will attempt to say, that by porting the helm, when a light—even half a mile off—two points on the lee bow, could not be brought one point on the weather bow, which is sufficient to ensure safety.

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"The charges brought against the Bestemor are not supported, and are contradictory. For instance, one, that she kept away, and ran into the Tornado, is impossible, for they must have known by so doing was certain destruction for a small vessel to run under the bows of a large vessel. Again, they are accused of doing the very opposite, viz., keeping so close a luff that she lost her way, became helpless, and fell off, thereby causing the collision. This charge is groundless; for, if she got up into the wind her sails would fill again, and she would get 'head-way' before she had fallen off one point. And, lastly, one of the witnesses finds fault for not doing what the others say was the cause of the collision. 'She ought to have luffed up and squared her after-yard.' But the evidence of the Bestemor all agree in saying, that the captain's orders were obeyed, viz.: 'To keep the ship close on a wind,' which they all say was done; and, further, that she did not lose her way by luffing up to the wind.

"J. D. ARMSTRONG.

"E. D. ASHE, *Commander Royal Navy*."

The gentlemen, with whose assistance I am favoured, find that the sole blame is to attach to the Tornado, and none at all to the other vessel, and I am of the same opinion. The decree will, therefore, be in favour of the Bestemor with costs (*a*).

J. W. and W. Cook, and C. A. Pentland, for the Promoters.

Alleyn and Chauveau, for the Tornado.

(*a*) The Constitution, 2 Moore's P. C. C. (New Series) 453.

Tuesday, 3rd September, 1872.

LORNE—MARTIN.

Where a steamer descending the St. Lawrence with a schooner lashed to her starboard side came into collision with a steamer at anchor, showing a green and white light, the persons on board the former, supposing the steamer at anchor to be approaching: *Held* to be in fault for having ported her helm, and thereby caused damage to the schooner which might have been avoided if she had kept her course or starboarded. But as the steamer at anchor should not have shown a green but a white light only, as directed for steamers at anchor, no order was made as to costs.

JUDGMENT.—*Hon. Henry Black, C.B.*

On the 7th of November last, the steamer Lorne was proceeding down the river St. Lawrence with a raft of twenty cribs of timber in tow, and shortly after passing Cap St. Michel, on the south shore, about sixteen miles below Montreal, a chain cable by which the raft was attached to the steamer broke, and the raft drifted on shore. The Lorne was then fastened to the raft on the outside, the latter covering an intervening space of about 100 feet; her red light and her two mast-head lights were taken down, and a white light was placed above the hull, as directed for steamers at anchor; but the green light was not removed, as required by the rules concerning lights, and no fire was kept burning on the raft. In this place the channel is 1200 feet in breadth; and at a distance of about 500 feet from the Lorne, the river steamer Montreal passed her at about seven o'clock in the evening. The pilot of the Montreal states that the land opposite which the Lorne was lying is high, that he saw her as he supposed about 100 feet from it, and that a vessel drawing twenty feet of water might have passed at any place

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LORNE.

between the Lorne and the Montreal. At about eight o'clock of the same evening, the steamer Merritt, with the schooner Canadienne, of the burthen of 103 tons, lashed to her starboard side, was rounding the point at Cap St. Michel. Hilaire Naud, the master of the Merritt, who was also the pilot, and Victor Paquet, master and part owner of the Canadienne, were at the time both standing on the bridge of the Merritt. They saw, one states at a distance of a mile, and the other at a distance of a mile and a quarter, right ahead, a green and a white light. The master of the Merritt supposed that a steamer was approaching, and ordered the helm to be put a port. How many points he went to starboard he cannot say, but sufficient, as he imagined, to clear an approaching vessel. A minute or a minute and a half after this order was given to port the helm, he discovered the lights—those of the Lorne, at about 300 feet distant, to be stationary. An immediate order to put the helm hard a starboard was then given, and the engine reversed, but not sufficiently in time to prevent a collision. The Merritt passed free, but the port bow of the Canadienne was brought into collision with the port bow of the Lorne; and for the injury thus sustained the owners of the Canadienne have brought this suit, upon the ground that the Merritt and the Canadienne were deceived by the lights of the Lorne, which, at the time of the collision, were those of a vessel under weigh. The substantial allegation in support of the claim is that about a quarter of an hour after eight o'clock in the evening, Victor Paquet, the master and part owner of the Canadienne, perceived the green, white, and red lights of the Lorne, about three quarters of a mile off, and approaching end on; that the Merritt and her tow, the Canadienne, ported their helms to pass on the port side of the Lorne, which had the appearance of a ship under steam coming up the river, and meeting the Canadienne end on; that they were about 150 feet dis-

tant from the Lorne when it was discovered that she was not under weigh, but lying at anchor with a raft on her port side; that there was only time sufficient then for the Merritt to pass the Lorne on the north side, but not to clear the Canadienne, the port bow of which vessel came into collision with the port bow of the Lorne.

Taking the whole of the evidence into consideration, it is quite clear that the red light of the Lorne was not and could not have been visible from the Merritt or the Canadienne. It had been taken down some time before the Lorne was first seen by the people of the Merritt and the Canadienne. The masters of both vessels were on the bridge of the Merritt; they saw but the white and green light. The second pilot and the helmsman of the Merritt say that they saw the white and the green light, and to these four may be added the mate of the Canadienne, who testifies to the same effect. Five witnesses of the promoters thus prove that no red light was visible, and confirm the testimony of the witnesses of the defence, on board the Lorne at the time of the collision, who state that the red light had been previously removed. But one witness says that he saw a red light, in which he was evidently mistaken, a matter of the less importance as the movements of the Merritt and Canadienne were not affected by what this witness says he saw.

The Merritt appears to have committed a very common error, that of porting her helm before it was ascertained whether it was incumbent upon her to do so or not. If the Lorne were in motion, as the masters of the Merritt and Canadienne supposed, it was clearly their duty to abstain from porting until a red light of the steamer supposed to be approaching was visible to them. If a steamship sees the green and white lights only of another steamship, they are not "meeting end on or nearly end on, so as to involve risk of collision," nor are they "crossing so as to involve risk of collision," within the 13th

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Article of the Steering and Sailing Rules. They are passing clear of each other, and as these rules refer to cases in which two ships under steam are meeting end on or nearly end on, so as to involve risk of collision, or in which two ships are crossing so as to involve risk of collision, none of these rules apply to the case. The only way in which the ship seeing the green and white lights of the other can come into collision with the vessel showing the green light on the starboard side or ahead is by porting to it, and there is, therefore, no necessity to port on such an occasion. She is not required to port to the green light seen on her starboard side, but she can starboard if necessary, as that will keep the two vessels further apart. If she ports to the green, she must inevitably run across the path of the vessel carrying the green light. So that if, as the people of the *Merritt* and *Canadienne* surmised, the *Lorne* had been under steam, they ought either to pursue their course, or to have starboarded, in either of which cases a collision would have been avoided. "The cause of collision," as stated by a practical writer, "in ninety-nine cases out of a hundred is believed by him to be either ignorance of the regulations or neglect of them." Under the head of ignorance and neglect may be included the frequent practice of altering prematurely without having ascertained which way it should be altered, and also of deviating from your course when it is your duty to keep it. Another cause of collision also coming under the head of ignorance is a prevalent but quite unauthorised notion, that on all or nearly all occasions the helm should be put to port in preference to starboard to avoid a collision, whereas there is but the solitary case of vessels meeting end on or nearly end on, in which port only is the rule (*a*). The act of the officers of the *Merritt* and *Canadienne*, in porting their helms, when they should not have done so, was the cause of the accident, and they must suffer the

(a) Rule of the Road of Sea, by Captain *A. F. R. De Horsey*, *R.N.*

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consequences. Had the Lorne been even in an improper place, without lights at all, and the officers of the Merritt and Canadienne had it in their power to avoid her consistently with their own safety, they would have been answerable ; as the much larger steamer Montreal passed the Lorne in a very broad channel without accident, the Merritt and Canadienne could have done so, with an equal amount of care and caution. I therefore pronounce against the claim of the owners of the Canadienne, but inasmuch as the Lorne should have exhibited a white light, and no other, while at anchor, and as this may have to a certain extent misled the other vessel, I make no order as to costs.

Langlois, Angers, and Colston, for promoters.

Andrews, Caron, and Andrews, for the Lorne.

Friday, 20th September, 1872.

POMONA—BRUCE.

While a vessel floating amidst the ice of the St. Lawrence, without any person on board, and without a rudder, her master and crew having left her, but intending to return, four persons went out to her in canoes, and by aid of her sails, grounded her in a place of safety. £200 sterling allowed as salvage.

JUDGMENT.—*Hon. Henry Black, C.B.*

POMONA.

This is a suit brought by François Michaud, Jean Baptiste Michaud, Elie Michaud, and Charles Borromée Michaud, all of Kamouraska, for salvage services rendered to the Pomona, an iron vessel owned by Sir Hugh Allan and others, of the burthen of 1195 tons, whereof James Bruce was master. This vessel left the port of Montreal towards the end of November last, and, having taken on board a pilot, sailed from Quebec on the 27th of that month. She encountered rough and tempestuous weather, with extreme cold, until the morning of the 30th, when she lay off Crane Island at anchor. There the anchor was slipped, the crew being unable to raise it, and, under the pilot's directions, an unsuccessful attempt was made for the south shore, the wind being very strong from the west. After having proceeded to about two miles above L'Islet Pier, she grounded, but floated off, and some four miles to the east she grounded again. The next morning (1st December), the weather being extremely cold, and the river full of ice, all hands left and reached the shore at L'Islet in safety. There the crew were discharged and went to Quebec, the mate remaining with the master. The master, the mate, and two pilots, with eight men, sent down from Quebec by the ship's agent, followed the

POMONA.

vessel by land, keeping her in sight until about a mile below the church of St. Jean Port Joly. They boarded her, and found the second anchor and the rudder gone, and, a snow-storm coming on, left her. She had drifted as far as the point of St. Roch's Bank at the Traverse, and grounded about six miles from the shore, where she lay stationary until the 9th December, when she drifted down the river. The next morning, the 10th of December, she was seen passing the Kamouraska Islands, a distance of about twenty-eight miles further down the St. Lawrence, when the four promoters formed a party to go out to her. The vessel was at some distance from the shore, and after dragging their canoe over the ice about two miles from the main land to Grosse Isle, they had clear water, and continued on about three miles, and reached the vessel at about ten o'clock in the forenoon. They drew the canoe on board, and found no one in the vessel, all the doors closed, sails furled, the deck covered with snow, and the ropes stiff. The Pomona continued drifting, the wind was from the west, and rather stronger than when the promoters left the shore. François Michaud, one of them, assumed the command of the vessel. There being no rudder, he states that with a view to alter her course he caused the spanker and two jibs to be unfurled and set; and that after manœuvring the sails for two hours, the head having been brought round to the south, he succeeded in running her ashore about a mile below Grosse Isle. This occupied them from ten in the morning until about three in the afternoon, when the Pomona grounded, the promoters remaining on board. In the meantime the master and his party were following the vessel from St. Roch to Kamouraska, intending, if circumstances permitted, to return on board of her. They arrived at Kamouraska in the evening of the 10th, and next morning went on board and found the promoters in the vessel. He then engaged them to work at wages, and they did so until the 17th.

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The promoters now claim salvage for services rendered between the morning of the 10th December and the 11th. They assert that from ten o'clock in the morning until about four in the afternoon they were constantly occupied in manœuvring the ship. That having lost her rudder, they had recourse to the sails, by the setting of which and the shifting of them they ran her into a place of safety inside one of the Kamouraska Islands, that this object was attained principally through the skill and knowledge of the coast, shown by François Michaud, one of the promoters, who by common assent had assumed the command of the vessel; and that if it had not been for the knowledge of the locality which Michaud possessed, and his skill in guiding the vessel, she could not have been placed where she was in safety.

This the owners of the ship and cargo deny, and allege that the promoters in no degree whatever contributed to her preservation. That there was no wind or not sufficient to fill the sails in the forenoon of the 10th December; and that having no rudder, she drifted with the ebb tide below Grosse Isle, and falling in with the flood and ice coming up she took the ground. That the promoters are not sailors accustomed to navigate vessels of the class of the Pomona, and that even a competent crew, in the state of the vessel, the river, and the wind, could not have directed her course, which was controlled entirely by the currents and the ice until she grounded.

But one question of fact presents itself, upon which evidence somewhat voluminous has been adduced. Did the exertions of the promoters on the 10th of December aid in bringing the vessel into a place of safety? Now, it is established that sails were set by the promoters, these sails were the spanker, two jibs, and the fore-topmast staysail, or some of them. Although the testimony varies as to which of them were set, it is certain that some were while the vessel was in motion, on the morning

of the 10th. Whether the sails so set and shifted from time to time influenced the course of the vessel, we have, on the one hand, the master and others with him, who state as their opinion that the strength of the wind as it prevailed at the time was not sufficient to do so; and that it was by the tide, current, and ice alone that she was forced to the south and took the ground. On the other hand the promoters who were on board the vessel swear that her bow was by means of the sails changed from the east to the south-west, and contributed to bring her where she grounded. In addition to their testimony several of the witnesses who saw the sails set speak as to the effect of them immediately upon being set, and this was to change the course of the vessel. One of the witnesses of the defendants, Captain Urquhart, speaking of the probable effect of the spankers and jibs, if set while the ship's head was to the east, with the wind a little to the south of west, says the effect, if any, would be to bring the head round to the south. The efforts of the promoters unaided by the tide and current would most probably have been ineffectual, providentially their exertions were favoured by the tide and current. If they contributed in any degree to the safety of the vessel, no matter how slightly, they are entitled to compensation. An American jurist, whose judgments are entitled to very great weight, as well from his patience of research as from his sound discriminating learning, after stating that a claim for salvage must depend on actual services, a mere attempt not being sufficient, says:—"If Providence kindly aids their exertions, by which the object is attained, so much the better for them, nor would that circumstance deprive them of merit, although it might diminish the rate of compensation; but exertions must be made, and the probability that they contribute or might contribute to save the property should appear by some proof, although, from circumstances, slight proof only could be expected. I will

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not say that where the damage is proved, and the vessel is conducted by the asserted salvors into a place of safety, every presumption, in the necessary absence of other evidence, may not be made in their favour." — (*Mr. Justice Washington.*)

In the present case the promoters have more than presumptive evidence in their favour, and the general interests of navigation and commerce of the country demand that exertions of this nature should be liberally remunerated. The value of the vessel and cargo is considerable, and the sum of £200 sterling is not more than a fair allowance. I do not think that the claim for salvage is affected by some of the promoters having signed receipts with their marks for eight days' service on board the ship. In giving these receipts it is quite plain that they had no intention of abandoning their claims for salvage (a).

The decree will be for £200 sterling and costs.

Andrews, Caron, and Andrews, for salvors.

J. Cook and J. W. Cook, for owners of ship and cargo.

(a) *The Silver Bullion*, 2 and cases cited in 2 Pritch. Spinks, Eccl. and Ad. R. 70; Dig. p. 831.

Tuesday, 8th October, 1872.

ABERGELDIE—BRUCE.

A certificate was given by the master of a sailing vessel which, while in charge of a pilot, had, by collision with a vessel at anchor, caused damage, in which certificate it was stated that the pilot had piloted his vessel to his entire satisfaction : *Held*, in a case of doubt, as to whether the master or pilot was to blame for the collision, that the certificate was a subsequent ratification of what was done so as to render the owners of the sailing vessel liable for the damage.

JUDGMENT.—*Hon. Henry Black, C.B.*

This is a suit brought against the barque Abergeldie, of the burthen of 628 tons, by the owners of the schooner Louisiana, of 92 tons burthen, for damages arising from a collision which took place at about 10 o'clock in the forenoon of the 16th of May last, opposite St. Thomas, in the river St. Lawrence, about 40 miles below Quebec. The weather was fine and clear. The Louisiana was at anchor, and the Abergeldie was sailing up the river with a flood tide, and a light, if any, breeze from the east. Two questions are raised by the defendants: 1st, to whom the blame attaches; and, 2ndly, whether by law the owners are exonerated from the damages. Upon the first point the evidence leaves no doubt that the Abergeldie was the sole cause of the collision, occasioned by the want of proper care of the persons on board. A vessel in motion is bound, if possible, to steer clear of and avoid a vessel at anchor, which could and ought to have been done on the occasion in question. It is urged, however, that the defendants are not liable, because the vessel was in charge of a licensed pilot. Now, a shipowner, except so far as his liability is limited by the statute, is responsible for

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any damage occasioned by negligence in the navigation of his vessel. Where pilotage is compulsory, as it was in this case, it is not sufficient merely to show that there was a pilot on board at the time of the accident, but the burthen of proof lies upon the ship to establish this further fact, that the damage was occasioned exclusively by the pilot's fault. The pilot in his evidence attempts to throw the blame upon the master, who on the other hand declared that the damage was occasioned by the fault of the pilot alone. Taking the whole of the oral testimony together, it might admit of a doubt whether the statement of the one or the other was correct; but the difficulty is removed by a certificate given by the master himself, addressed to the secretary of the Corporation of Pilots at Quebec, on the 17th of May, in which he states that the pilot took charge of the Abergeldie on the 15th, at Father Point, and piloted her to Quebec to his "entire satisfaction." I entertain no doubt of the power of the master to give this certificate; and as, with a full knowledge of all the circumstances, he has thus deliberately approved of what was done by the pilot, he is bound thereby as fully as if he had himself directed the same. Every consent given to what has been already done has a retrospective effect, and is equivalent to a previous order: *Omnis ratihabitio retro-trahitur et mandato priori æquiparatur*. With such a certificate the Court could not properly pronounce an opinion in direct opposition to that of the master himself, and, by attributing fault to the pilot alone, relieve the owners from their liability for the loss or damage occasioned by their vessel. The decree must therefore be for the damage proceeded for, and costs to be established in the usual manner (a).

Alley and Chauveau for owners of Louisiana.

J. W. and W. Cook for Abergeldie.

(a) *The Diana*, 4 Moore's P. Schwalbe, 14 Moore's P. C.
C. Cases, 11; *The Christiana*, 7 Cases, 241.
Moore's P. C. Cases, 160; *The*

Tuesday, 22nd October, 1872.

PRIDE OF ENGLAND—BEAN.

Where the master and crew of a vessel were taken off by salvors in canoes, the former abandoning her, fearing a total wreck, and the vessel was afterwards saved by the meritorious exertions of the latter, a moiety of net value of ship and cargo was allowed as salvage.

JUDGMENT.—*Hon. Henry Black, C.B.*

This is a cause of salvage promoted by Vincent Tremblay, David Lévesque, Frédéric Côté, Joseph Tremblay, and Eugène Côté, all of the parish of Isle Verte, mariners, against the ship *Pride of England*, and her cargo. Upon the general facts of the case there is no material contradiction or dispute. The vessel proceeded against sailed from the port of Quebec on the 23rd of November last, with a cargo of timber and other lumber, bound to the port of Greenock. She encountered very tempestuous weather, and extreme cold, and, on the 1st of December, being beset in a floe of ice in the neighbourhood of Rivière du Loup, became completely unmanageable. The rudder was unserviceable; she was very much cut about the bows and other places; she was making water fast, and the pumps were so frozen that it was impossible to thaw them. On the 2nd of December the weather was the same, and the position of the vessel unaltered, the ice extending on all sides as far as the eye could reach, and, as stated by the master, from shore to shore. The vessel was driving on to Cacouna reef, and the master and officers, after consulting the pilot, came to the conclusion that, as nothing could be done to save the ship, they should abandon her, and save their lives. At about 4 o'clock in the after-

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noon three canoes came off from the shore, about five miles distant, and took away part of the ship's company, the master taking the chronometer in his hand. The pilot took charge of a box containing the ship's register, official log-book, the master's sextant, and all the vouchers and other ship's papers, but in getting into the canoe he had fallen through the ice, and had to let go the box to save his life. A very small portion of the effects were saved, and the men were badly frost-bitten. They arrived at the shore at 8 o'clock at night, David Lévesque, one of the promoters, having assisted them to reach the land. The master then requested him to go back to save five of the crew left on board, stating that he himself would not sleep on board another night for the value of the vessel. The promoters at midnight crossed from the parish of Isle Verte to the island of the same name, and having traversed it, they observed the Pride of England two miles higher up than the light-house, and about half a mile from the shore of the island. After going over the ice a distance of two miles with their canoes, they took off the second mate, the carpenter, the cook, and two apprentices. Four of the promoters landed them, leaving Vincent Tremblay, one of them, on the ice alongside of the ship, there being no room for all in the canoe. When these four returned, they found the ship drifting, full of water, and leaning over on the starboard side, one anchor gone, and the other hanging over the side with seven or eight fathoms of chain. The rudder was broken and useless. The tide was falling, the wind was from the west, and the promoters set the sails to avoid Green Island reef. Their intention, they say, after finding the rudder useless, was to abandon the vessel, but as she was so far out, they had recourse to the sails. They accordingly set the main-stay-sail, the fore-sail, fore-stay-sail, a jib, flying jib, and the main-top-mast stay-sail. Finding that the ice would prevent the vessel from grounding on

the south shore of the St. Lawrence, they made for the north, a distance of 21 miles, and reached the north shore about 9 o'clock at night. During the last three hours they had encountered a storm, but eventually grounded the ship at a place called Pointe aux Crapauds, two or three miles above Escoumains. Next morning, with the aid of ten other persons, they moved the vessel, and for fourteen days afterwards they were occupied in discharging provisions and effects, and dismantling the vessel. In the meantime the master and crew had proceeded to Quebec, and on the 13th of December he caused a formal protest to be made in which he declared that he had abandoned the vessel, fearing she would become a total wreck. During the inclement months of December, January, and part of February, the promoters continued to be in possession of the vessel at the place where she was grounded; and on the 19th of February they made arrangements with the owners of the steamer Arctic to proceed from Quebec for the purpose of taking her off, and placing her where she would be more secure. They succeeded in towing her to Tadousac, where she arrived on the 25th of February, and remained until brought up to Quebec, after the opening of the navigation, by the steamers Powerful and St. Andrew, both sent down by the agents of the promoters for that purpose. The case is one of extraordinary merit, entitling the promoters to the highest possible rate of salvage remuneration, that is, a moiety of the net value of the ship and cargo (*a*), both confessedly saved from total and inevitable loss by the active exertions and great enterprise of the promoters. The decree will also be for their expenses, and costs of suit.

(*a*) *The Inca*, 12 Moore's P. C. C. 189.

Friday, 13th June, 1873.

MARGARETHA STEVENSON.

The Merchant Shipping Act, 1854, excludes the Admiralty jurisdiction in suits for wages of master and mariners where the amount due is less than £50 sterling. The evidence in this case showing a less amount to be due, the claim of a master was dismissed without exception to the jurisdiction pleaded.

THE COURT.—*G. Okill Stuart, Q.C., Deputy Judge and Surrogate.*

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This is a suit for wages brought by Joseph Saturnine Brown, formerly master of the *Margaretha Stevenson*, against William Markland Molson, her owner, residing at the city of Montreal. In the spring of the year 1871, an agreement in writing was made between these parties through the agent of the respondent, Mr. Holiday, whereby the promoter agreed to serve as master of the *Margaretha Stevenson* during the season of navigation of the river St. Lawrence of that year, the rate of wages to be \$550 for the season, or \$78 per month. Mr. Holiday states that it was a part of this agreement, although not inserted in the written memorandum, that the respondent was to have the power of dismissing the promoter at his pleasure, and that, in the event of his giving satisfaction only, he was, at the end of the season, to receive a bonus of \$50. The promoter has, upon oath, denied that he agreed to the power of dismissal, and asserts that the bonus was payable at all events. The season of navigation of 1871 passed over, the promoter navigated the vessel to the satisfaction of the respondent, and the agreement, such as it had existed for 1871, was in the month of April, 1872, renewed for the season of navigation of that year ;

but before its expiration, on the 12th of October, the respondent dismissed the promoter without assigning any cause, and this suit has been brought for the \$550, the wages stipulated, and the *bonus* of \$50, forming the sum of \$600 less \$354.40, which had been paid in various sums, at different periods, as required by the promoter. The balance claimed is \$245.60.

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The defence is, that the agreement for the season was \$500, that the promoter was entitled to wages until the 12th of October, the day of his discharge only, which reduces his claim by \$117.90, and that he had not given credit for other sums paid him as wages including two sums, one of \$10, and another of \$7, which, if credited, would have brought the promoter into the respondent's debt.

The respondent received the written agreement from Holiday, no copy of it was given by the latter to the promoter, and it has not been produced. The ship's accounts have not been produced either, they being also in the possession of the respondent. From these, the promoter states on oath, it will appear that the sums not credited were expended as ship's disbursements, and that the cash-book, also in the possession of the respondent, if produced, will establish the fact.

A careful examination of the evidence shows that the contract, as respects wages, was \$550 for the season of navigation, that the promoter did not agree to an arbitrary power of dismissal in the respondent, it being admitted by the agent of the latter that it formed no portion of the contract as reduced to writing, and the promoter states on oath that he never engaged, and would not have engaged upon such terms, that the promoter was paid at broken periods and in unequal amounts as he desired, the other small sums referred to are not proved to have been received by the promoter as wages. So that the claim, as it stands before the Court, is \$550,

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less the sum of \$354.40 paid on account, leaving a balance due as wages of \$195.60.

The matter of a *bonus* is one separate and distinct from the wages. The respondent affirms that it was optional with him to allow it or not, and this the promoter has denied. This Court is disposed to believe the statement of the former in this particular, as the promoter gave a discharge to the respondent at the close of the year 1871, for that year, when it does not appear that the bonus was allowed. But whether it were to be paid absolutely or not is quite immaterial in this case, because not being a contract for wages this Court has no power to deal with it.

The claim of the promoter thus stands limited to \$195.60, and the question now arises—has this Court jurisdiction, by virtue of the 191st section of the Merchant Shipping Act, which, adopting the 189th section, applies it to the wages of the master? The latter provides “that
“ no suit for the recovery of wages under the sum of £50
“ shall be instituted by or on behalf of any seaman or
“ apprentice in any Court of Admiralty or Vice-Admiralty,
“ or in the Court of Session in Scotland or in any Superior
“ Court of Record in Her Majesty’s dominions, unless the
“ owner of the ship is adjudged bankrupt or declared
“ insolvent, or unless the ship is under arrest, or is sold by
“ the authority of any such court as aforesaid, or unless
“ any justices acting under the authority of this act, refer
“ the case to be adjudged by such Court, nor unless
“ neither the owner nor master is or resides within twenty
“ miles of the place where the seaman or apprentice is
“ discharged or put on shore.”

The amount of wages which the promoter is entitled to being \$195.60, and short of £50 sterling: according to the clause now cited this Court has no jurisdiction over the subject-matter in dispute; but it is said that it can proceed to judgment, because the jurisdiction has not been

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excepted to. However much disposed the Court may be to acquiesce in this view, considering that the promoter is justly entitled to the sum of \$195.60, it is quite impossible to do so. The language of Lord Kenyon in the case of *Laurence v. Crickett* (a), is the rule always acted on in the English Courts. "If the proceedings in the Court of Admiralty be erroneous, they are to be rectified in appeal, but if they have no jurisdiction over the subject-matter, the whole is *coram non judice*—" and again, in the case of *Menetone v. Gibbons* (b), it was held, "that the sentence being a nullity, is at any time impugnable." The decisions in the Courts of the United States are uniform, and establish that where the subject of the suit is without the jurisdiction of the Court, consent of parties cannot confer jurisdiction, and much less can it be conferred by misleading. By the maritime law a master could not sue in the Vice-Admiralty at all for wages before the enactment now referred to, and the present claim, being under £50 sterling, stands just as it would have stood, if brought before it was passed, when this Court must have *ex officio* noticed the absence of jurisdiction. A case which turned upon the same enactment, very analogous to the present, was decided in the High Court of Admiralty by Dr. Lushington in 1861. In the case of the *Harriet* it was held—

"That the Court of Admiralty has no jurisdiction over a contract for wages different from the ordinary mariner's contract, and that the 189th section of the Merchant Shipping Act, 1854, bars a seaman from recovering wages less than £50 in the Court of Admiralty, except in the contingencies therein specified.

"The plaintiff signed the ship's articles as mate, at £5 10s. per month; he also verbally agreed with the owner to act as purser, and superintend the ship's accounts

(a) 2 T. R. 653.

(b) 3 T. R. 269.

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for £4 10s. per month additional. He served afterwards in both capacities, and finally claimed £63. Held that the parol agreement was in the circumstances, a special agreement, which the Court could not enforce, and the claim, thus falling below £50, was dismissed altogether."

As in the case of the *Harriet*, the present suit was brought for a sum exceeding £50 sterling, but owing to the disallowing of a claim of \$50, the sum demanded is brought down to \$195.60, for which I may express my regret that I cannot pronounce judgment as Dr. Lushington did in the case of the *Harriet*, when he said, "I regret that this decision not only deprives the plaintiff of wages which he has justly earned as purser, but must also bar him from recovering in this Court the wages he has earned as mate. His claim reduced to a claim for mate's wages only, does not amount to the minimum of £50, which the statute requires for a proceeding for seaman's wages in a Superior Court, except in certain contingencies, which are not applicable to this case. It is true that the words are—"No suit or proceeding for the recovery of wages under the sum of £50 shall be instituted, and that here a claim, and a *bond fide* claim, has been made for a sum exceeding £50; but I must interpret the statute to require a recovery of £50. I dismiss this case, but I do not give costs" (c).

In the case of the *Harriet*, as in the present case, there does not appear to have been any act or protest or plea to the jurisdiction. This Court has no other alternative than to adopt the conclusion arrived at in the former case, that is to dismiss this case but without costs.

The case of the *Blakeney* (d) was cited at the argument as to the necessity of a plea to the jurisdiction, but this case had a more immediate reference to one of the ex-

(c) Lushington's A. R. 285.

(d) Swabey, 428.

ceptions mentioned in the enactment which has been referred to, and there was no amount awarded in that case. MARGARETHA STEVENSON.

R. J. Bradley, for promoter.

Holt, Irvine, and Pemberton, for respondent.

Friday, 28th November, 1873.

GORDON—CROSBY.

The owners of a vessel which came into collision with another, while at anchor, made liable for damages where the cause was not, exclusively, the act of the pilot.

THE COURT.—*G. Okill Stuart, Q.C.*, Deputy Judge and Surrogate.

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On the 16th of August last the Norwegian barque *Eros*, of 466 tons, was anchored off the west end of Goose Island, the wind strong from the south-west, or west south-west. She lay to the ebb tide in eleven fathoms of water, with port anchor and forty-five fathoms of chain. The channel where she was anchored was, in breadth, from a mile to a mile and a quarter, and there was abundance of room, on either side, for vessels to pass. Her sails were furled, the anchor watch set, and a look-out stationed forward. Between two and three o'clock in the afternoon a vessel, afterwards ascertained to be the *Gordon*, of 604 tons, was seen coming down the river, with a fair wind and ebb tide, making six or seven knots an hour. All her square sails were set, except the mainsail. The weather was bright and clear, and vessels were visible at a distance of four miles. The *Gordon* came into collision with the *Eros*, and thereby her jib-boom, bowsprit, martingale, foretop mast, foretop-gallant mast, royal mast, the maintop-gallant mast, and main royal mast were carried away; the port cathead was bruised and strained, the outrigger broken, and three planks on the port bow and the wooden sheathing and metal below them damaged; the end of the maintopsail yard and both the trucks of the top-gallantmast heads were broken off, one of them was lost,

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several of the lanyards were broken, and other damage done to the Eros. At the time of this collision the master of the Gordon was in the cabin, which was on deck, and the pilot was in the cabin also, where he had gone but a few minutes before. The master heard the chief mate sing out "Hard-a-port, a ship right ahead." He then ran on deck and saw the Eros at anchor a little on the port bow of the Gordon, not more than a cable's length off. The master of the Gordon, who has been examined as a witness, states that "there was no one in particular on the look out; that the order 'hard-a-port' given by the chief mate, while he was in the cabin, was the proper order to give under the circumstances; that an order to starboard instead of to port would have made it a bad job; that if the helm had been kept steady, as the pilot ordered when he last heard him speak before the collision, and if the chief mate had not given the order 'hard-a-port,' the Gordon would have struck the Eros 'stem on' about her port cathead; that when the vessels fouled, he thought he heard some one on board the Gordon sing out 'starboard;,' that he was at the wheel, and seeing that it was necessary to starboard, to ease the blow, he righted the wheel from hard-a-port and put it a little to starboard, at which he left it. The effect of this starboarding was, he says, to slew his ship round and to prevent damage as much as possible. * * He attributes the collision to the pilot not keeping a vigilant watch as to where he directed the ship." The chief mate of the Gordon states, the last order he heard the pilot give to the man at the helm was "steady, keep her as she goes;" this was between two and three o'clock in the afternoon. The order was obeyed, and about five minutes afterwards the steward, reported a vessel ahead. We were under sail at the time, going before the wind with the tide in our favour, at the rate of about five knots an hour through the water. He saw vessels ahead before the steward reported this one, but did

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not pay particular attention to them. When the steward reported the vessel ahead, he looked and saw a barque, which afterwards proved to be the Eros, not a quarter of a mile off and almost ahead, a little on the port bow. He reported, as he thought to the pilot, "vessel ahead," believing him to be on the house where he had seen him but a few minutes previously. Not receiving any answer he turned round and saw that the pilot was not there, he then ordered the man at the wheel, to put the helm hard-a-port, which was done immediately. The Gordon was only two cables' length from the Eros when he gave this order. The Gordon payed off to southward, but not enough to clear the Eros, and two or three minutes after he gave the order to port, the vessels came into collision. There was no body, he adds, specially on the look-out, and the steward's duty is to attend to the cooking and provisions principally.

The boatswain of the Gordon states that he "did not see the other vessel before the steward reported her, and that he looked when he reported, and she was then a cable's length and a half, or two cables' length, from the Gordon, a very little on the port bow, very nearly ahead. It was not more than a minute and a half or two minutes after, that the vessels came into collision. * * It was hard to tell whose watch it was, there was no watch set. We were all securing the deck-load ready for sea. There was no one on the look-out that I know of, it was not the pilot's orders that there should be any one." The steward, who was the first to report the ship ahead, had gone forward, accidentally, and it is very probable that, if he had not done so, the Gordon would have struck the Eros stem on, and sunk her. The man at the helm, from where he was, could not see an object ahead. It has been proved by the respondents that objects ahead could be seen just as well from the top of the house aft as from the forward part of the ship, and that the look-out is, generally, posted

aft in day time and forward at night. The pilot, examined for the respondents, says, that when he left the deck the mate was close to the house on deck and must have seen him going into the cabin, that there was no look-out, that he had not ordered one, and if there had been one, had he reported the Eros a minute sooner, there would have been no collision; that he thought the people forward working were keeping a good look-out without orders from him, and that if there had been a good look-out forward there would have been no collision.

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In this suit the owners of the Eros claim compensation upon the ground that the Gordon was improperly navigated, that her people were guilty of negligence, and that it was by their carelessness and default that the collision was occasioned. The answer of the owners of the Gordon is, that she was in charge of a branch pilot to whose negligence the loss and damage sustained is to be imputed, and that they are consequently exempt from liability.

A difficulty in most cases of collision, conflicting testimony, has not been met with on this occasion. The Eros has not been charged with having committed any fault, nor was she guilty of any, and the question is, whether the injury sustained was owing to the negligence of the pilot alone. To determine this question, the evidence adduced on behalf of the owners of the Gordon will suffice. Her crew appear to have been attending more to securing the deck-load than to the navigating the vessel. No watch was set and there was no look-out. The pilot had left his post, in the presence of the mate, who was in a position on the house to see objects ahead; and, according to his own testimony, he had seen vessels ahead but had paid no particular attention to them. It may be a question as to which of the parties, the master and crew of the Gordon, or her pilot, were most guilty of negligence, but that the two together were extremely careless there can be no doubt. The damage to the Eros is not at-

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tributable to the pilot alone, but, perhaps, more to the master and crew of the *Gordon* than to him. It has been decided in this Court that, where a pilot is on board the ship, he must be actually on deck, and in charge, to relieve the owners of their responsibility (a), and, also that the duty of the pilot is to attend to the navigation of the ship, and the master and crew to keep a good look-out (b). The owners of a ship are compelled by law to have a pilot on board, and, as a consequence, when the fault is his exclusively, they have the benefit of exemption from liability; but, when they participate in it, they are deprived of such relief. I must, therefore, as the pilot was not on deck, and as there was no look-out, pronounce against the owners of the *Gordon* for the damage done to the *Eros* by the collision, with costs.

Blanchet and Pentland and W. Cook, for promoters.
Fournier, Q.C., and Hearn, for the respondents.

(a) *The Courier*, supra, 91.

(b) *The Secret*, ib. 133; *The Oriental*, ib. 144.

Friday, 26th June, 1874.

LATONA—LEWIS.

Where there was a deviation in the voyage from that stated in the Shipping Articles, occasioned by a return to the port of Quebec not specified in them, the engagement of a seaman was terminated as there was then no subsisting contract, and a plea to the jurisdiction, alleging a subsisting voyage, under the 149th section of "The Merchant Shipping Act, 1854," which enacts that "no seaman who is engaged for a voyage, or engagement to terminate in the United Kingdom, is entitled to sue in any Court abroad for wages," overruled.

Quære.—How far can an engagement of a seaman, void from not stating the nature of the voyage as required by "The Merchant Shipping Act, 1854," be considered as operative under a subsequent Act ("Merchant Shipping Act, 1873") which admits, instead, a statement of the *maximum* period of the voyage and the ports and places (if any) to which it is not to extend.

This suit was for wages brought by James Williams a seaman before the Judge of Sessions at Quebec and referred by him to this Court for decision as allowed by the "Merchant Shipping Act 1854."

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JUDGMENT.—*Hon. G. Okill Stuart.*

The promoter sues for his wages as a seaman from the 19th of October 1873 to the 10th of June, 1874. The owners, the respondents, have appeared and have excepted to the jurisdiction, setting forth, as they allege, a subsisting contract in ship's articles to terminate in the United Kingdom, and pray that the promoter's demand may be dismissed as, by the Merchant Shipping Act 1854, "No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom, is entitled to sue

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in any Court abroad for wages." In their Act on protest the respondents state the engagement of the promoters to be contained in ship's articles signed by him on the 18th of October, 1873, at Quebec, for a voyage which had been previously commenced, "*From Liverpool to Montreal, thence to and from and from and to, any ports and places in the Atlantic, Pacific and Indian oceans, the China, Eastern, Mediterranean, North Baltic and White Seas and Continent of Europe, calling for orders, if required, and back to a final Port of Discharge in the United Kingdom, term not to exceed three years.*" It is admitted that the vessel, after the articles were signed at Quebec, proceeded to Buenos Ayres, thence to Barbadoes and back to Quebec, where she now is.

The questions submitted to the Court are,—1st. Is the engagement of the promoter void under the 149th section of the "Merchant Shipping Act of 1854," which requires the nature of the voyage to be stated; and if not, 2ndly, was there a deviation from the voyage which has relieved the promoter from his engagement. Either of these questions being determined in the affirmative no engagement for a voyage to terminate in the United Kingdom exists, and this Court has jurisdiction to allow the promoter his wages. Cases, as well in the High Court of Admiralty as in this, have occurred wherein agreements with seamen less indefinite than the present have been declared void under the provision of the Merchant Shipping Act, which provides that such an agreement shall, among other particulars, contain the nature of the voyage, which the courts have held was one intended to protect the mariner and give him a fair intimation of the nature of the service in which he might engage himself. The engagement of the promoter has a wider range and the nature of the voyage is more indefinite than in the case of the *Marathon*, wherein the engagement of a seamen was declared null (a),

(a) *Supra*, 9.

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and there would have been no hesitation to pronounce a similar judgment, on the same ground, in this case, were it not for a recent statute of the Imperial Parliament, "An Act to amend the Merchant Shipping Acts," whereby the rigour attached to a statement of the nature of the voyage is materially relaxed. In many cases it is very difficult to state its precise nature, alterations and deviations are required after the sailing of a vessel, and the consequences of these have rendered the engagements of seamen void, a result injurious to the shipowner, while these changes may have been indifferent to the seaman until the temptation of higher wages to be had, as at the port of Quebec, where the crimping system has so much prevailed, induces the seaman to demand his release from his articles and to claim his wages. By this recent Act it is provided in the 7th section, that "any agreement with a seaman, made under section 149 of the Merchant Shipping Act, 1854, may, instead of stating the nature and duration of the intended voyage or engagement, as by that section required, state the *maximum* period of the voyage or engagement and the "places or parts of the world, if any, to which the voyage or engagement is not to extend." Although this enactment does not repeal the 149th section, in so far that a contract stating the nature of the voyage must always be carried into effect, it makes a very material and beneficial change for both the shipowner and the seaman. Limitation as to the period of a voyage seems to be now more of the essence of the contract than its nature. The *maximum* period must be stated, but, its nature, no further than a statement of the places or parts of the world, if any, to which the voyage is not to extend. The voyage expressed in the articles in this case is of the most comprehensive nature, and whether a statement of the places where the vessel is to go is not an indication of where she is not to go, upon the principle

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that the mention of the one excludes the other, *inclusio unius exclusio alterius*, and that, in the spirit, if not the letter, the recent Act has been complied with, might have been a question for the Court now to decide, were it not that, conceding the validity of the engagement, the second objection to it, that of a deviation, is conclusive, the departure from the intended voyage being somewhat analogous to the one in the case of the *Varuna* (b). The express stipulation in the engagement is that after leaving Quebec the *Latona* should go to and from, and from and to, any ports and places in the Atlantic and other oceans and seas, and back to a final port of discharge in the United Kingdom. A return to the port of Quebec does not seem to have been contemplated either by the master or the seaman. If the engagement is valid, under the one statute or the other, a deviation has relieved the mariner from his contract. The evils of a crimping system have been referred to by counsel as prevailing at this port, and, no doubt, some of these have arisen from the difficulty of stating the exact nature of an intended voyage, the absence of which has in many instances led to the release of a ship's crew. By the recent Act a rigorous interpretation of the 149th section of the Merchant Shipping Act, 1854, may be avoided by a simple statement "of the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend." A compliance with these requirements is easy. The Legislature has, after a long trial of the 149th section of the Merchant Shipping Act, come to the relief of the shipowner by removing a difficulty which has occasioned defective articles, and one of the causes which has led to the abduction of seamen. In the present case the agreement

excludes the port of Quebec as a port of return after having been once there, and the duty is imposed upon me to overrule the act on protest. ' The contract has terminated and the promoter is entitled to his wages.

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Alley and Chauveau, for the promoter.

Fournier, Hearn, and La Rue, for the respondents.

Friday, 31st July, 1874.

HAROLD HAARFAGER—HELLIESEN.

Where, by moving of the ice-bridge in the harbour of Quebec, a steamer was brought under the bow of a sailing vessel, her walking beam broken, and her machinery injured: *Held*, that the damage was not owing to the contravention of a by-law of the Trinity House, but was caused entirely by a "*vis major*," and was the result of inevitable accident.

The Court will not *ex officio* notice a by-law of the Trinity House at Quebec, but will require legal evidence of its contents and publication.

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This was a suit of Mr. John Ross against the owners of the ship Harold Haarfager for running foul of and colliding with his steamer Providence, whereby she was damaged to the amount of several hundred dollars. At the time of the collision these two vessels were at their winter berths, inside of Dinning's booms, on the north shore of the St. Lawrence, at the city of Quebec, and there they were brought into contact by the irresistible force of a field of ice, and injured. The alleged cause of damage was the neglect of a Port Regulation and improper mooring of the ship. Plea, inevitable accident the result of a *vis major*.

JUDGMENT.—*Hon. G. Okill Stuart.*

The Harold Haarfager, a Norwegian ship of 1019 tons, was compelled by the setting in of winter, in November last, to remain in Dinning's booms until between two and four o'clock in the afternoon of the 8th of May, where she was then lying, near the Providence, and frozen in with her. Each of them then had their heads westward up the river. The bow of the Harold Haarfager rather over-

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lapped the stern of the steamer, which was inside towards the shore on the right side of the ship, at a distance of about ten feet. Four chains and three hawsers, from bow and stern, secured the Harold Haarfager to the wharf and booms, one hawser passing over the stern of the Providence without however touching her. Her yards were topped up, her jib-boom was partly rigged in but extended from twelve to twenty feet beyond the cap of the bowsprit, and the crew, consisting of nineteen men, were on board. The ice-bridge then began to move, and brought the Harold Haarfager and the Providence into collision, the cast metal walking-beam of the steamer and some of her machinery was broken, while the bowsprit of the ship was split and six of her stanchions, with a portion of her rail, bulwarks, and some planking broken on the starboard quarter. Her jib-boom remained loose in the cap of the bowsprit, and had a chip or abrasure inside the ship, but was not broken. The bowsprit was rendered useless and was replaced. The jib-boom continues in use. The promoter complains that this jib-boom had been extended during the winter, in contravention of a bye-law of the Trinity House, at Quebec, which provides, "that vessels shall, within forty-eight hours after their arrival in the port of Quebec, have their jib-boom and flying-jibboom rigged in, so as not to exceed the length of three feet outside the cap of the bowsprit, and the same shall be kept so rigged in until they may be about to sail, and no vessel shall be allowed to have her jib-boom or flying-jibboom run out within the harbour of Quebec until after she shall be loaded and at anchor in the stream;" and, further, that while so extended the Harold Haarfager was struck by the ice and thereby forced from her position, which brought the jib-boom across the Providence, striking her walking-beam, breaking it, and damaging other parts of her machinery. It is said also that the berth of the ship was a foul one owing to a difficulty of exit, except at high

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tides, and that the hawser over the stern of the Providence should not have been placed there. The first of these two last objections in no way affects the promoter, and the second is of no weight, as the hawser in no way interfered with the Providence. Although an extension of a jib-boom is necessary in the navigation of a vessel, it is easily understood that in a crowded port like Quebec, in a busy season, its remaining extended would lead to collision, and if it is made to appear that a bye-law, as stated, has been passed, and that the damage was caused by the jib-boom, the owners of the Harold Haarfager are liable, because it would be an omission on their part which contributed to the collision (*a*).

By the Trinity House Act of 1849, every bye-law, before taking effect, "must be inserted during two weeks in English in a Quebec newspaper published in English, and in French in a Quebec newspaper published in French, and such bye-laws shall be then printed in a pamphlet form, and any person shall be entitled to a copy on paying its fair value, and a copy of any bye-law of the Trinity House of Quebec, certified by the clerk, under the seal of the corporation, shall be deemed authentic and shall avail accordingly in all courts of justice in this province." No bye-law, or copy of any bye-law, which prohibits the running out of a jib-boom has been proved, but a printed notice said to be of extracts from the bye-laws of the Trinity House, containing such a prohibition, has been placed upon the record. These extracts are not proved to be true extracts, nor is there any evidence to show that such a bye-law has been published, which is essential to its being binding on the respondents. The Harbour Master, who has been examined as a witness, states that such printed notices are given to most of the shipmasters

(*a*) The Despatch, 3 L. T. (N.S.) 220; L. C. Ad. R. 75, The Cumberland.

coming to this port, but this evidence is not sufficient, and, particularly in the present case, as the Harbour Master has testified that the master of the Harold Haarfager has been, by his direction, prosecuted for his neglect in not rigging in his jib-boom, and that the prosecution has failed, but from what cause does not appear.

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As it would be a matter of regret if this suit were to fail from the absence of documentary proof, which possibly might have been had, and as it has been heard upon the merits, it is fitting that this Court should pronounce its opinion as if the port regulation, as alleged, had been proved :—The promoter says that the damage was caused by the extended jib-boom ; the respondents, on the contrary, say that it was by the bowsprit. In the former case the respondents would be liable for the damage done, in the latter, not. This is a question of evidence entirely. Three witnesses belonging to the Providence attribute the cause of damage to the Harold Haarfager, and they say that she was forced by the ice upon the Providence ; that the jib-boom was brought across her walking-beam and broke it, with other parts of the machinery. This testimony conflicts with an equal force of testimony given by persons belonging to the Harold Haarfager ; perhaps the testimony of the latter may be the best entitled to credit, but a perusal of the testimony of two persons belonging to neither vessel will set the question at rest. The one, John Webb, witnessed the collision from the wharf, at a distance of thirty feet ; and the other, Ignace Fortier, from his bateau, seventy feet distant. In addition to their testimony there are the material facts, not to be controverted, that the bowsprit was broken about a foot inside the ship, and that the jib-boom was not and remained loose in the cap of the bowsprit. John Webb says, “ that he was watching the vessels at the moment. The Harold Haarfager started first and ran astern about ten or twelve feet, until her hawsers brought her up. The

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next thing I saw was the Providence breaking her mooring and coming athwart the Harold Haarfager—that is, broad-side on—to the ship's bow. The parts of the vessels which first came into contact were the steamboat's walking-beam with the cap of the ship's bowsprit. I did not see the ship's jib-boom touch the walking-beam at all ; had it done so I must have seen it. When the walking-beam struck the cap of the bowsprit, as the ice continued to shove, the force of it caused the steamboat to cant and the walking-beam got under the bowsprit. The walking-beam was broken by the collision. The minute after the beam struck the cap the boat canted, and as the beam got under the bowsprit I saw that it was broke in two. . . The jib-boom of the Harold Haarfager did not contribute to the accident in any way ; it was higher than the walking-beam, and I am positive did not come in contact with it. I believe the jib-boom would certainly have broken had it struck the walking-beam." Ignace Fortier states, "that as the steamer came down upon the Harold Haarfager, her walking-beam—that is, the after part of it—got under the cap of the ship's bowsprit and broke. . . The jib-boom did not touch the walking-beam nor any part of the steamboat's machinery. . . I am quite positive that the walking-beam was broken by coming in contact with the under part of the cap of the bowsprit. . . Had the jib-boom come in contact with the walking-beam it would have snapped at once. The jib-boom is a light spar, and is easily broken."

A careful examination of the testimony leading to the conclusion, as it does, that the respondents did not, by any act or omission, contribute to the coming into contact by these vessels, their plea has been made out, and the present suit must be dismissed ; but as it is the practice of the High Court of Admiralty not to give costs on either side when a collision is held to have occurred from in-

evitable accident (a), and as this rule was followed in this Court very recently, it is adhered to on the present occasion (b).

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Action dismissed.

Fournier, Hearn, and Larue, proctors for Promoters.

Blanchet and Pentland, proctors for Respondents.

R. Alleyn, Q.C., Counsel.

(a) *The Itinerant*, 2 W. Rob. 244; *The Addler*, 5th Dec. 1845. (b) *The Lady Head*, and *Eliza Christie*, 11th Nov. 1873.

Friday, August 21st, 1874.

AMERICA—HARRIES.

Where the master of a steamer exacted an exorbitant contract for salvage service from the master of a sailing vessel, which, with the mate alone on board, was in imminent danger of shipwreck, the same was set aside and a *quantum meruit* allowed.

JUDGMENT.—*Hon. G. Okill Stuart.*

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The Moisie Iron Company, owners of the iron screw steamer *Margaretha Stevenson* of 66 tons register, commanded by Eugene Hammond, have brought this suit for a sum of £1,500 sterling against the owners of the *America*, a brigantine of 189 tons, commanded by John Harries, as the stipulated price for salvors' services rendered to her on the 22nd of November of last year, by the *Margaretha Stevenson*, having gone out from the harbour of Bic and towed her within it. In their responsive plea, the owners of the *America* say, that advantage was taken of the master of that vessel to impose upon him an exorbitant contract when their vessel was in distress, and the life of her mate was in danger. They also plead that the *America* was injured from having been struck by the steamer, and from having been placed in a bad berth within the harbour of Bic. They repudiate the agreement of the master to pay the sum of £1,500 sterling; they admit a salvage service, and leave the value of it to be settled by this Court. The two last objections require no further notice than to say, that the collision complained of was incident to the salvage service, and was caused by the necessity of breaking ice around the vessel before she could be reached, and that the berth given to her in the harbour is not proved to have been

insufficient. But, as respects the charge of coercion, to extort from the master of the *America* a promise to pay an exorbitant price, it is a serious one, and as this is the first of a long series of salvage cases which have come before this Court wherein an agreement has been impugned for this cause, it is well that the principles which guide to a decision in it should be well understood by masters of vessels and others called upon to render salvage services in the river St. Lawrence, where the greatly increasing trade of the Dominion is adding, materially, to an increase of the shipping which navigate its waters.

The *America*, with her cargo, valued together at £4,663. 11s. 1d. sterling, and a crew of eight men, including the master, sailed from Montreal for Swansea, in Wales, and proceeded down the river St. Lawrence on the 20th of November last. She arrived off Bic harbour, on the south shore. Having no other means of discharging her pilot there, the master sent him on shore with three men in the jolly boat, at about three o'clock in the afternoon. This boat not having returned by the next morning, the master went off to Bic island and expected to find it there, but did not. He attempted to return to his vessel, but was prevented by ice which had been increasing upon the river. He then went on board the steamer *Margaretha Stevenson*, lying at the entrance of the harbour. The cause of her being there was, that she had been at the Moisie river on the opposite or north shore of the St. Lawrence, about one hundred and thirty-six nautical miles lower down. There the ice forms earlier than on the south shore, and she had to effect her entrance into the Moisie on the 17th of November, by breaking through it when fifteen inches thick; and on her returning towards Montreal, her intended winter quarters, on the morning of the 21st, when off Bersamis Point, at eight o'clock, she met with so much ice that the master determined upon running over to Bic to telegraph for orders.

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It was shortly after her arrival there that the master of the *America* went on board for assistance, but the master had gone on shore. Being anxious to get to his vessel he went on shore at Bic, and there met on the road the master of the steamer. He stated to him the circumstances in which he was placed, and that his mate was on board the *America* alone; and made an offer to him of £50 to put him and his men on board of her. The proposal was received by a laugh, the master of the steamer saying, at the same time, it would be better in the morning, and that he would do so then. The two masters, after fruitless attempts to go on board their vessels, owing to the ice, then went to the same lodging at Bic, where they slept, and where the men who went off in the jolly boat joined their master. On shore another offer of £50, to put the master and crew of the *America* on board of her, was again received by the master of the steamer in the same manner, and an answer that he would do so for £500. On the morning of the 22nd an attempt was made by the master and crew of the *America* to go on board of her, the weather being fine but cold. This attempt failed also, and some time after, about ten o'clock, he observed that she had parted from her anchor and was coming up adrift before the wind, partly surrounded by ice, with her lower topsail and jib set. The crew and the master, anxious for the mate's safety, made another attempt to go out to her in the long boat, but the ice forced them to return. The master then sent for Mr. McKinnon, who was in the employ of the promoters, in the hope that he would induce the master of the steamer to put him on board his vessel. This gentleman came, and upon his asking what he would charge to bring in the *America*, the master of the steamer said that as his vessel was not insured, he would ask £2,000 sterling; and, upon Mr. McKinnon saying, "Be reasonable," he answered that the weather was worse than on the previous evening, and that

he would do it for £1,500 sterling. The steamer at this time had her steam up, and was lying about one hundred yards off, ready to go into winter quarters. At this moment the crew of the America observed from the shore that she was heading towards Bic Island, and said to the master that they would report him if he did not save the mate's life. Thereupon, in a state of excitement, the master of the America, addressing himself to the master of the steamer, said, "Under these circumstances, go out." The answer he received was, "Let us be off." The crews of each vessel immediately went off to the steamer, and, within two hours and a half, they towed the America into the harbour with the mate on board.

This statement makes it manifest, that there was a promise to pay £1,500 sterling for the bringing of the America into Bic harbour. The influencing motives of each party to it will be found in the following answers of the master of the steamer to questions submitted to him:—

"*Question.* Was there not a great deal said by the master and the crew of the brigantine concerning the necessity of doing something to save the life of the mate, who was the only man on board of her?—*Answer.* Yes, we spoke of it.

"*Question.* Is it not true that Captain Harries was necessitated to assent to pay the sum of £1,500 sterling for the purpose of saving the life of the mate?—*Answer.* Not only for that but to save the vessel also.

"*Question.* If the steamer had gone out to the vessel in the forenoon, would not the risk to all concerned have been much less than by delaying until the evening?—*Answer.* Yes. But we had not agreed upon the charge. I had to land my passengers before starting. They were landed about nine o'clock in the morning."

The value of the steamer is said by the Port Warden of Quebec to be about ten thousand dollars, and that the price for the use of steamers, of a similar description, is

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ten dollars an hour. That she was insured, there can be no doubt, although her master said not. It is stated in the libel that she was, until the 25th November, quite long enough to cover the period necessary to bring the America into Bic. The witnesses of the respondents value the salvage service from two hundred to a thousand dollars. Mr. Sylvain, to whom the master of the steamer applied to recommend a pilot, saw the steamer go out and come in. He has stated that the steamer got through the ice without any trouble, that there was open water in different places, and the wind had broken it in pieces, that she returned to Bic with the America between four and half-past four o'clock in the afternoon, having taken about two hours to perform the service; and that, under all circumstances, and, as the Margaretha Stevenson was to winter at Bic, he considers that five hundred dollars would be a fair remuneration for the service. Testimony to rebut this has not been adduced by the promoters; they say that they rest solely on the "Bond." I shall, therefore, assume the *maximum* estimate value of the service to be one thousand dollars, and the *minimum* two hundred dollars.

On weighing the testimony it is to be observed that the iron screw steamer is admirably adapted to the navigating of the St. Lawrence when ice has formed. The facility with which it crosses without accident daily and all day, opposite the city of Quebec throughout the winter, amidst fields and blocks of ice from one to three feet thick, excludes the idea of much risk. The capacity of the Margaretha Stevenson was exhibited at the Moisie on the 17th of November, when she broke ice from fifteen to seventeen inches thick, and on the 21st, when she crossed from Bersamis Point to Bic, within about two hours—when "the river," as the master has stated, was a "complete sheet of ice all the way across," not very thick, but it extended almost to the shore. He has also stated that

when the steamer went out for the America the ice was upwards of an inch and from two to three inches thick, and near the brigantine more than three inches. The pilot, whose services were perhaps as indispensable as those of the steamer, has made no claim for salvage nor for anything more than his ordinary pilotage, amounting to six dollars, which was paid to him by the promoters. Examined as a witness for them he has stated that, when the steamer went out, the America was at a distance of two miles from the entrance of the harbour and adrift. That it took about an hour to go out to her, that the ice around her was broken by the steamer, that she was taken in tow, and that it took about an hour and three-quarters to bring her in. That there was no current, that it was high water, and that the distance which she was towed was not less than two miles and a half, and further that he feared no risk to his life.

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The case then comes to be substantially this,—that on the 21st November, the loss of the America and loss of life were impending. Proposals to enable the master to relieve the vessel and the man on board of her, although within the power of the master of the promoters to do it, were treated with levity and harshness. An attempt to force a salvage service in lieu of an ordinary contract for work and labour was manifested. No sympathy for the anxiety of another sailor was felt. A steady cool determination to impose upon the respondents an exorbitant price was manifested throughout the negotiations, and this would, in all probability, if not yielded to, have caused a sacrifice of the vessel and the life of the mate, as it is proved that in the course of the night ensuing, a violent snow storm arose and lasted several days. With reference to cases of this kind a distinguished jurist has said, "It is true that contracts made for salvage services are not ordinarily held obligatory by the Court of Admiralty upon persons whose property is saved, unless this Court can

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clearly see, that no advantage is taken of the parties' situation and that the rate of compensation is just and reasonable. The doctrine is founded upon principles of sound public policy, as well as upon just views of moral obligation. No system of jurisprudence, purporting to be founded on moral or religious, or even rational principles, could tolerate for a moment that a salvor might avail himself of the calamities of others to force upon them a contract unjust, oppressive, and exorbitant; that he might turn the price of safety into the price of ruin; that he might turn an act demanded by a Christian and public duty, into a traffic of profit which would outrage human feelings and disgrace human justice" (a).

In a case before Dr. Lushington, where a written contract for salvage services came under his consideration, the objection to which was, that the price agreed upon was four times the value, he said, "The Court is very much indisposed to set aside an honest agreement, but it must be satisfied that the agreement is honest. Where there is any doubt its rule is to adhere to the agreement, and the Court would be just as ready, in favour of salvors, to set aside an agreement if satisfied that it was wholly inequitable. But is not this demand exorbitant? I regret to say, on the present occasion, for the Court is generally anxious to protect the interests of salvors, that it is an exorbitant demand, and such as no court of justice would be justified in carrying into effect" (b). As was done in that case, where an agreement far less exceptionable than the one now under consideration was declared inoperative, so in this, I pronounce against the agreement which stipulates for about twelve times the value of the services rendered, and award £125 sterling and the costs.

(a) Judge Story in the case of the *Emulous*, 1 Sumner's Rep. p. 210.

(b) The *Theodore*, Swabey's Rep. 351; *Phantom*, 1 L. R. Adm. & Ecc. 61.

The case of the *Pride of England*, one not long since determined by the late Judge of this Court, has been cited on behalf of the promoters as a precedent for this. The allusion to it is rather an unhappy one, and as compared with this, affords a marked contrast. In that no agreement was exacted from the master. The services were voluntary. The salvors saved the lives of the master and crew, who, at the same time, abandoned her as a certain loss, not by the aid of a powerful steamer, but by that of a small canoe. After being abandoned and drifting with a broken and useless rudder, the vessel full of water, and leaning over to the starboard, was taken possession of by the salvors. By means of the sails aided by the wind, they managed to cross the St. Lawrence, a distance of twenty-one miles, in the month of December, amidst the ice, and grounded her safe on the north shore, and cared for her during the winter. In rendering the judgment in that case, the Court said, "This is a case of extraordinary merit, entitling the promoters to the highest possible rate of remuneration—that is, a moiety of the net value of the ship and cargo, both confessedly saved from total and inevitable loss by the active exertions and great enterprise of the promoters" (a).

As in that case, so in all others where meritorious salvage services may come before this Court, they will be considered with especial favour, whether there be an agreement between the parties or not. This Court will always give effect to an agreement if it be equitable and just. In case of doubt it will maintain it, but where there is none as to its injustice it will most assuredly be passed over unnoticed.

Holt, Irvine, and Pemberton, for the Promoters.

Langlois, for the Respondents.

Andrews, Q.C., Counsel.

(a) *Supra*, 189.

Friday, September 11th, 1874.

THE THAMES—HYDE.

Where an ocean steamer descending the river St. Lawrence opposite a buoy designating a bend in the channel for her to turn, instead of doing so, crossed over and sunk a barge in tow of a tug steamer on the opposite side. *Held*: That the tug steamer and her tow were not to blame by reason of an alleged custom for ascending vessels to stop below the buoy for descending vessels to pass it first, and that if there were such a custom it would afford no excuse for a descending steamer coming into collision if she could avoid it.

But it appearing that the cause of collision was exclusively the act of the pilot of the ocean steamer, exemption from liability granted to the owner.

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Two suits, one by James Allan and Alexander Allan of Glasgow, Bryce Allan of Liverpool, Andrew Allan and Sir Hugh Allan of Montreal, owners of the barge Cyclops, and the other by Robert Wilson Steele, master of the same barge, were brought against John Temperley, owner of the ocean steamer Thames, the first for damage done to the Cyclops, and the second for the loss of effects, valued at £500 sterling, said to have been sustained in the sinking of her by the Thames.

JUDGMENT.—*Hon. G. Okill Stuart.*

The promoters, in each of the cases against the owner of the steamship Thames, complain of negligence and mismanagement on the part of those in charge of her. This vessel, an ocean steamer of 1,057 tons, and drawing sixteen feet nine inches forward and eighteen feet six inches aft, on the morning of the 6th of October, 1872, at about eight o'clock, was passing down the river St. Lawrence near Varennes, at a distance of about fifteen miles

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from the city of Montreal. A collision there took place between her and the iron barge Cyclops, which was sunk ; the owners of the latter now claim an indemnity for the loss by them thus sustained, and her master asks compensation for the loss of personal effects which were in her at the time.

The respondent, the owner of the Thames, retorts the charge of negligence and mismanagement, and says that the barge was towed too far up the channel across the course of the Thames, thus causing the collision, but that if blame were to attach for what was done on board of her at the time of the collision, it must be imputed to Athanase Dufresne, a licensed and branch pilot taken on board by compulsion of law, and that therefore he is relieved from liability.

The facts attending this collision are to be found in a mass of evidence composed of the depositions of twenty-four witnesses, in number equally divided between the parties, and from these may be evolved the following result of the testimony. At the time already stated the morning was clear and the wind rather strong from about south-west. With this fair wind the Thames, in charge of the pilot Dufresne, was approaching a point in the channel of the river, while running along the Island Ste. Thérèse towards the Island Delorier, to pass which required care and attention. The spot is designated upon charts of the river by a black buoy known as the buoy of Varennes. There the channel takes a bend, and the course which the Thames had to take was a turn round the buoy and keep in the channel to the south. When about a mile and a half above the buoy her pilot saw moving up the river, at a distance of about a mile and a half below it, a steam-tug with two vessels in tow, which were afterwards ascertained to be the steam-tug Rocket, the iron barge Cyclops of 360 tons, deeply laden, principally with iron, drawing about eight feet of water, and the

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ship Gleniffer of 1,057 tons, and drawing from seventeen to eighteen feet. The barge and the ship were on separate hawsers or tow lines fastened to the stern-post of the tug; that of the barge was from fifty to sixty fathoms long, and that of the ship from ninety to one hundred fathoms. The barge was nearest to the tug, on her star-board or right side, and the ship was on her port or left side. The persons on board this tug and her tows saw the Thames about the same time that the pilot on board of her saw them. The tug and her tows were then in the centre of the channel designated by a line between two lights on the Island of Ste. Thérèse in front of them. Their course, after sighting the Thames, was to diverge to the north on their right side in the channel, so as to allow sufficient space to the Thames, when at the buoy, to make a turn and to keep in the channel on the south, and thus safely pass them. On the other hand it was incumbent upon the Thames, so soon as she reached the turning-point on the north of, and opposite the buoy, at a distance of about eighty feet from it, to sweep round to the south and thus not interfere with either the tug or her tows. Before, and at the time, the Thames had reached the buoy, the tug and her tows were on the north side of the centre of the channel, and the persons on board of them saw that the Thames was not making the turn as she should do at the buoy, the effect of which might be a collision between her and the tug and her tows or some one of them. The pilot and master of the Gleniffer adroitly caused her hawser, or tow line, to be cut, which brought her safe over to the south, quite out of the way of the Thames; the Rocket was hurrying on to the north with the barge, when the Thames, in an attempt to pass between the latter and the Gleniffer, grazed the Rocket with her jib-boom, and struck the barge on her port-quarter, the effect of which was to break a hole in her of fifteen feet by five or six, mostly under the water line,

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penetrating her iron plates and bending some of the bar iron in her hold. She sank almost immediately, the persons on board being but in time to save themselves upon the anchor of the Thames. The latter, after remaining at anchor near the sunken barge for a short time, steamed up the river, and, finding a convenient place to turn, came down again and passed within eighty feet of the buoy on the starboard, and one hundred and twenty feet inside the sunken barge. The masts of the barge were then seen above the water, and she lay about a quarter of a mile below the buoy. The master of the Thames has stated in his evidence that, on the last occasion, the helm was put "hard to port" at the buoy, and kept there until she made the round, south into the channel; that he thought the depth of water in which the Thames was, at the time of the collision, did not affect her steering power, and that she was "in good trim" that day, for answering her helm. It is by no means proved that the helm was put "hard to port" at the proper time before the collision. The master of the Thames and her pilot say that it was put "hard to port," but this was after the hawser of the Gleniffer had been cut and apparently when too late.

In determining where blame is to attach, it is material to know where the barge was when struck, and, being material, as usual in collision cases, a contrariety of opinions is to be found in the testimony as to this fact. If she were on the north side of the channel, with room for the Thames to pass free, the persons on board of her would not be to blame, if she were on the south they would. If the Thames crossed the channel to the north instead of winding to the south she would be in fault. To account for the barge lying so far north as she did when sunk, it has been said that she floated a considerable distance with the Thames before sinking. This statement of some of the witnesses is met by that of others who say that the blow and the sinking of the barge were almost

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simultaneous. I am disposed to adopt the statements of the latter, in preference to those of the former, as facts that are known and are not disputed afford strong confirmatory proof. When it is considered that the barge was iron, her cargo principally iron, that she was deeply laden, said to be within eighteen inches of the water, that the hole made in her, mostly under the water line, was of the dimensions already stated, there can be no doubt that she sunk on the spot over which she was struck or very near it. If she did float, even a considerable distance before she touched the bottom of the river, still there would be a broad margin between her when sunk and the centre of the channel which has been ascertained from measurement by a civil engineer to have been 744 feet.

Upon this evidence questions, pertinent to the matters in controversy, arise, and they are such as to require the intervention of nautical skill. This has been kindly afforded by Captain Ashe, of the Royal Navy, superintendent of the Observatory at Quebec, and by Mr. Gourdeau, Harbour master for this port. These gentlemen after attending the arguments of counsel and maturely weighing the evidence, have furnished the following answers to the questions submitted to them :

1st Question.—Was the steamer Thames in proper trim for navigating the River St. Lawrence at the time of the collision ?

Answer.—She was.

2nd Q.—Was the steamer Thames at the time and place of collision in charge of a pilot ?

A.—She was.

3rd Q.—Was there any rule for navigating the St. Lawrence, making it obligatory on the persons directing the course of the tug steamer Rocket and her tows to remain at or about the upper end of the Isle Delorier until such time as the Thames passed the buoy of Varennes ?

A.—There was no rule to that effect, but, as a matter

of prudence, it would have been advisable to go slowly so as to allow the Thames to make the turn of the buoy.

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4th Q.—Had the Thames, after sighting the tug steamer Rocket and her tows, time to take the necessary course, by porting her helm or otherwise, for making so much of a turn at the buoy of Varennes, which designates the south side of the channel, as to avoid the collision with the Cyclops? And if so, what did she do or not do that caused the collision?

A.—She had. There was room enough for the steamer Thames to pass the south side of the channel opposite the buoy, and had her helm been put “hard to port” in time, which could have been done, no collision would have happened, because the evidence shews that the steam tug and her tows were on the north side of the channel before and at the time of the collision. If the pilot of the Thames saw that she did not answer her helm, his duty was to have stopped her. We are of opinion that, by the exercise of ordinary discretion, the pilot of the steamer could have passed and cleared the tug Rocket and her tows without a collision.

5th Q.—Was the collision inevitable? and if not, to whose fault is it to be attributed?

A.—It was not inevitable and might have been avoided by the pilot of the Thames as stated in the previous answer.

6th Q.—Was the cause of the collision the act of the pilot exclusively?

A.—It was the act of the pilot exclusively.

7th Q.—Were the orders of the pilot, at and before the time of the collision, implicitly carried into effect by the people of the Thames?

A.—They were.

The two several pleas of the owner of the Thames, the first imputing blame to the persons in charge of the steam tug Rocket and her tows, and the second attributing fault,

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exclusively, to the pilot of the Thames, in case the first should fail, are to be disposed of upon the questions thus answered by the nautical assessors. As respects the first, if it were determined in the affirmative, there would be no occasion to notice the second, as the suits of the promoters would be dismissed upon that plea. It was pressed at the argument, that the Rocket should have remained at the head of the Isle Delorier. Prudence would seem to have dictated that course, especially as the Messieurs Allan, the promoters, have made it a rule for their steamers to do so since the collision now complained of. It has been said that there was a custom to that effect, but there was not. Had there been one it would have afforded no excuse for a steamer, free in action and having wind and current with her, running foul of a steamer moving up against both and impeded in her progress by heavily laden vessels in tow, if with ordinary care she could have avoided them.—(a) That the Thames could have done so on this occasion there is no doubt, and when it is considered that the tug and the tows were on their right, on the north side of the channel, and that the Thames crossed over to the north and sunk one of them, the case against her assumes additional strength. I therefore think the blame on this occasion must attach to the mismanagement and misdirection of the Thames, and that none is to be attributed to the steam tug and her tows.

The remaining plea, that the cause of damage was the fault of the pilot and that this affords a shield against liability on the part of the respondent, was met at the argument, 1st. by an assertion that the orders, such as the pilot gave at and before the collision, were not correctly conveyed, a distance of 150 feet, from where the pilot stood on the bridge to the man at the wheel; and, 2nd. that the steamer Thames was not properly laden, that her

(a) *The Martha Sophia*, supra, 14.

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depth in the water was too great for her to steer well, that she would not obey her helm, and consequently, that these being causes of collision attributable to the owner, he must bear the consequences. As respects the first, the pilot, who, it is to be presumed, would not shoulder the responsibility if it rested with the master and officers of the Thames, has, in his evidence, admitted that the orders transmitted by him through the latter were responded to, and that the movements of the steamer corresponded to his orders. And, with reference to the second, the pilot of the Thames has also stated that her steering qualities were as efficient as those of the general run of steamers of her size and depth of water; but that which is conclusive on this subject is, that on her trip over the same ground, immediately after the collision, the power of her helm was manifested by clearing the buoy and passing the wreck of the Cyclops without difficulty or danger.

An exemption from blame in an offending vessel, when in charge of a pilot, under the Canadian Statutes, 27 & 28 Vict. c. 13, s. 14, and 27 & 28 Vict. c. 58, s. 9, was brought under the notice of this Court in the case of the *Hibernian* (b) which belonged to the Messrs. Allan, promoters in this suit. To it blame was attributed for the sinking of two barges in tow of the steamer *Canada*, but a short distance, about two or three miles, above the buoy of *Varennes*, and the learned and distinguished judge who then sat in this Court, and whose judgments were always attended with singular accuracy and care, exempted the *Hibernian* from liability upon the ground that the pilot was solely in fault. On an appeal to the Queen in Her Privy Council it was argued by eminent counsel that this judgment ought to be reversed, not only upon the particular merits which the case presented, but because the general and maritime law of the High Court of Admiralty

(b) *Supra*, 148.

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was the law which the Court of Vice-Admiralty at Quebec was bound to administer, and that the Canadian Statutes on which the judge of that Court relied, were without authority in it, a proposition so startling, as observed by Sir Robert Phillimore in expressing the opinion of the Privy Council while affirming the judgment, that their lordships were totally unable to follow the reasoning of counsel upon it (c). In accordance with the judgment so confirmed by Her Majesty in Her Privy Council, and adopting it as a precedent, it remains with this Court to dismiss, as it now does, the owner of the Thames, the respondent, from these two suits, solely because the entire blame for the collision rests with the pilot who had charge of her;—and, as the rule is in such case not to award costs, there are none allowed.*

Cook for the promoters.

Ross and Stuart and Andrews, Q.C., Counsel for the respondents.

(c) L. R. 4 P. C. C. 511.

(*) "The Pilotage Act, 1873" has been passed by the Dominion Legislature of Canada since the collision which occasioned this suit. It contains the following enactment which was passed on the 23rd May, 1873:—

"FREE PILOTAGE, 56. After the commencement of this Act no owner or master of any ship shall in any case be compelled to employ or to give his ship into the charge of a pilot, notwithstanding any act making the employment of a pilot compulsory." By the 92nd section of the same Act, the 14th section of "An Act respecting the Navigation of Canadian

Waters" (31 Vict. c. 58, s. 22), which is as follows:—"No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any place where the employment of such pilot is compulsory by law," is repealed. See the 388th section of "The Merchant Shipping Act, 1854."

The difference which prevails upon the effect of compulsory pilotage, as between England and the United States, is to be found in the following opinions:—

"The object of the Legislature in establishing pilots has

been to secure, as far as possible, protection to life and property, by supplying a class of men better qualified than ordinary mariners to take charge of ships in places where, from local causes, navigation is attended with more than common difficulty. To effect this object, it has, in general, been made the duty of the master of every ship, on arriving at any of the places in question, to take a pilot on board, and to give up to him the navigation of the vessel. The master, however qualified to conduct the ship himself, is bound under a penalty, in a great measure, to divest himself of its control, and to give up the charge to the pilot. As a necessary consequence, the master and owners are exempted from responsibility for acts resulting from the mismanagement of the pilot." Per Baron Parke (Lord Wensleydale) apud *Lucey v. Ingram*, 6 Meeson & Welsby, 314, A.D. 1840.

"It may indeed be admitted, that in many of the cases, the judges, in giving the judgments, refer to the obligation of the master to take a pilot, as the ground on which his irresponsibility is founded; and no doubt that is the foundation, and possibly the only foundation, on which it can rest independently of the statutes; but the language of the exempting clause in the last Pilot Act carries the doctrine further, and it may well be conceived that the common law doctrine was not accidental but intentional." *Ibid.*

"Whether the Merchant Shipping Act applies to this case or not, I am of opinion that the owners of The Annapolis are exempt from responsibility by reason that the employment of the pilot was compulsory: the pilot was not their servant or agent; they could not avoid entrusting him with the management of the ship. In the cases of *The Maria* and *Protector* (1 W. Rob. 45) I have stated at some length my reasons for coming to this conclusion. I believe that the doctrine I then maintained, and now adhere to, is consonant with justice, and is in strict accordance with the principles adopted by the Legislature in the Merchant Shipping Act." Per Dr. Lushington, in the case of *The Annapolis* and *The Johanna Stoll*, 21st March, 1861. Reported in *Mitchell's Maritime Register*, of 20th April, 1861; 1 *Vernon Lushington's Rep.* 312.

THE CHINA.—A suit was commenced on the 21st October, 1863, in the Southern District of New York, against the owners of the steam-ship *China* for damage to the brig *Kentucky*, resulting from a collision with the *China*, at the port of New York, on the 15th July, 1863. A decree for the libellants was pronounced by the Hon. Samuel B. Betts, in the Southern District of New York. On appeal to the Circuit Court the decree was affirmed, and the following opinion expressed:—

NELSON, Chief Justice.—This

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is a case of collision in the harbour of New York.

The defence is, that the steamer at the time of the collision was exclusively under the charge and direction of a Sandy Hook pilot, duly licensed by the Board of Commissioners under the laws of New York. These laws are accurately stated in the brief of the appellant, and the result is, (1) That the master cannot act as a pilot in the harbour without being guilty of a misdemeanour, and punishable by fine and imprisonment; and (2) He cannot employ an unlicensed pilot without forfeiting to the Board of Commissioners the penalty of \$100; and (3) The master and owners are bound to pay full pilotage to the licensed pilot first speaking and offering his services, whether accepted or not.

It is clear, therefore, that the master and owners have no chance as to the taking or not of a pilot, or in the selection of him, and although there is no penalty, in the technical sense of the term, imposed for the omission to take one, yet the taking was compulsory, as the vessel could not get to sea without the licensed pilot, except by subjecting the master or his owners to penalties. And, if the case was pending in the Admiralty in England, or, perhaps, in any of the Courts of Law in Westminster Hall, the decree would be in favour of the respondent in the Court below, for we shall not undertake to

make a distinction when none in substance exists.

The only question in our judgment is, whether or not we shall follow the English rule. We agree there are solid reasons in favour of it, for it seems hard to subject the owners of the vessel to damages for the fault of one in navigation of her in respect to whom they had no choice in the selection.

But the judicial mind in this country seems to have recoiled from this rule of the English Admiralty, and, as far as we know, it has never been adopted or applied under our laws regulating the employment of pilots. The reason given, is the utter inability of this class of persons to meet the demand of damages for their negligence or unskillfulness in the discharge of their duties, coupled with the idea that the whole policy of the pilot laws is for the special benefit of that class in the community engaged in navigation; and although the employment of the pilot is compulsory, yet, in the judgment of the law making power, persons so employed are fitter persons for the discharge of the duties than if the master or owner had made the selection.

We confess the inclination of our own mind is in this direction, and, as at present advised, shall hold the owners responsible, expressing the wish that the case be taken to the Supreme Court, where the vexed question may be definitely settled. Decree affirmed.

APPENDIX.

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APPENDIX.

A.

3 & 4 VICT., CAP. 65.

An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England. [7th August, 1840.]

WHEREAS the jurisdiction of the High Court of Admiralty of England may be in certain respects advantageously extended, and the practice thereof improved: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the Dean of the Arches for the time being to be assistant to and to exercise all the power, authority, and jurisdiction, and to have all the privileges and protections of the judge of the said High Court of Admiralty, with respect to all suits and proceedings in the said Court, and that all such suits and proceedings, and all things relating thereto, brought or taking place before the Dean of the Arches, whether the judge of the said High Court of Admiralty be or be not at the same time sitting or transacting the business of the same Court and also during any vacancy of the office of judge of the said Court, shall be of the same force and effect in all respects as if the same had been brought or had taken place before the judge himself, and all such suits and proceedings shall be entered and registered as having been brought and as having taken place before the Dean of the Arches sitting for the judge of the High Court of Admiralty.

Dean of Arches
to sit for Judge
of Court of
Admiralty in
certain cases.

II. And be it declared and enacted, that all persons who now are or at any time hereafter may be entitled to practise as advocates in the Court of Arches are and shall be entitled to practise as advocates in the said High Court of Admiralty; and that all persons who now are or hereafter may be entitled to act as surrogates or proctors in the Court of Arches shall be entitled respectively to practise and act, or to be admitted to practise and act, as the case may be, as surrogates and proctors in the said High Court of Admiralty, according to the rules and practice now prevailing and observed or hereafter to be made in and by the said High Court of Admiralty touching the admission and practising of advocates, surrogates, and proctors in the said Court respectively.

Advocates,
surrogates, and
proctors of
Court of Arches
to be admitted
in Court of
Admiralty.

Whenever a vessel shall be arrested, or proceeds brought into registry, the Court to have jurisdiction over claims of mortgagees.

Court to decide questions of title in all causes of possession, salvage, &c.

Appeals may be made to the Court of Admiralty on distribution.

III. And be it enacted, that after the passing of this Act, whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively.

IV. And be it enacted, that the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry, which shall be instituted in the said Court after the passing of this Act.

V. And be it enacted, that whenever any award shall have been made by any justices of the peace, or by any person nominated by them, or within the jurisdiction of the Cinque Ports by any commissioners, respecting the amount of salvage to be paid, or respecting any claims and demands for services or compensation, which such justices and commissioners within their several jurisdictions are empowered to decide under the provisions of two Acts passed in the second year of the reign of King George the Fourth, for remedying certain defects relative to the adjustment of salvage, or whenever any sum shall have been voluntarily paid on any such account of salvage, services, or compensation, it shall be lawful for any person interested in the distribution of the amount awarded or paid to require distribution to be forthwith made thereof, and the person or persons by whom such amount shall be awarded, or in the case of voluntary payment the person by whom the same shall have been received, shall forthwith proceed to the distribution thereof among the several persons entitled thereunto, to be certified in the case of an award under the hand of the person or persons by whom such amount shall be awarded, and an account of every such distribution shall be annexed to the award; and if any person interested in the distribution shall think himself aggrieved on account of its not being made according to the award, or otherwise, it shall be lawful for him, within fourteen days after the making of the award, or payment of the money, but not afterwards, to take out a monition from the said High Court of Admiralty, requiring any person being in possession of any part of the amount awarded or voluntarily paid to bring in the same, to abide the judgment of the Court concerning the distribution thereof; and in the case of an award the person or persons by whom the award shall have been made shall, upon monition, send without delay to the said High Court of Admiralty a copy of the proceedings before him and them, and of the award, on un-

stamped paper, certified under his or their hand ; and the same shall be admitted by the Court as evidence, and the amount awarded or voluntarily paid shall be distributed according to the judgment of the Court.

VI. And be it enacted, that the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for necessities supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessities furnished, in respect of which such claim is made.

VII. And be it enacted, that in any suit depending in the said High Court of Admiralty the Court (if it shall think fit) may summon before it and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition, or before a commissioner, as hereinafter mentioned ; and notes of such evidence shall be taken down in writing by the judge or registrar, or by such other person or persons, and in such manner, as the judge of the said Court shall direct.

VIII. And be it enacted, that the said Court may, if it shall think fit, in any such suit issue one or more special commissions to some person, being an advocate of the said High Court of Admiralty of not less than seven years standing, or a barrister at law of not less than seven years standing, to take evidence by word of mouth, upon oath, which every such commissioner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts, and in such manner, order, and course, and under such limitations and restrictions, and to transmit the same to the registry of the said Court, in such form and manner as in and by the commission shall be directed ; and that such commissioner shall be attended, and the witnesses shall be examined, cross-examined, and re-examined by the parties, their counsel, proctors, or agents, if such parties, or either of them, shall think fit so to do ; and such commission shall, if need be, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto ; and the said High Court of Admiralty is hereby authorised to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted or made in any case of contempt of the said Court.

IX. And be it enacted, that it shall be lawful in any suit depending in the said Court of Admiralty for the judge of the said Court, or for any such commissioner appointed in pursuance of this Act, to require the attendance of any witnesses, and the production of any deeds, evidences, books, or writings, by writ, to be issued by such

The Court, in certain cases, may adjudicate on claims for services, and necessities, although not on the high seas.

Evidence may be taken *viva voce* in open Court.

Evidence may be taken *viva voce* before a commissioner.

Attendance of witnesses and production of papers may be compelled by subpoena.

judge or commissioner in such and the same form, or as nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by Her Majesty's Court of Queen's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said judge or commissioner shall be considered as in contempt of the said High Court of Admiralty, and may be punished for such contempt in the said Court.

Provisions of
3 & 4 W. 4,
c. 42, extended
to Court of
Admiralty.

X. And be it enacted, that all the provisions of an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the further Amendment of the Law, and better Administration of Justice," with respect to the admissibility of the evidence of witnesses interested on account of the verdict or judgment, shall extend to the admissibility of evidence in any suit pending in the said Court of Admiralty, and the entry directed by the said Act to be made on the record of judgment shall be made upon the document containing the final sentence of the said Court, and shall have the like effect as the entry on such record.

Power to direct
issues.

XI. And be it enacted, that in any contested suit depending in the said Court of Admiralty the said Court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such suit, and that the substance and form of such issue or issues shall be specified by the judge of the said Court at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the judge of the said Court to settle the same; and such trial shall be had before some judge of Her Majesty's Superior Courts of Common Law at Westminster, at the sittings at Nisi Prius in London or Middlesex, or before some judge of assize at Nisi Prius, as to the said Court shall seem fit.

Costs of issues
and commis-
sions to be in
the discretion
of the Court.

XII. And be it enacted, that the costs of such issues, or of such commission as aforesaid, as the judge of the said High Court of Admiralty shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the registrar of the said High Court of Admiralty, in such manner as the said judge shall direct, and that payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said Court.

Power to direct
new trials.

XIII. And be it enacted, that the said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner hereinbefore directed with regard to the first trial of such issue, and may by order of the same Court direct such costs to be paid as to the said Court shall seem fit upon any application for a new trial, or upon any new trial, or second or other

new trial, and may direct by whom and to whom and at what times and in what manner such costs shall be paid.

XIV. And be it enacted, that the granting or refusing to grant an issue, or a new trial of any such issue, may be matter of appeal to Her Majesty in Council.

Granting or refusing new trial, matter of appeal.

XV. And be it enacted, that at the trial of any issue directed by the said High Court of Admiralty, either party shall have all the like powers, rights, and remedies with respect to bills of exceptions as parties impleaded before justices may have, by virtue of the statute made in that behalf in the thirteenth year of the reign of King Edward the First, with respect to exceptions alleged by them before such justices, or by any other statute made in the like behalf; and every such bill of exceptions, sealed with the seal of the judge or judges to whom such exceptions shall have been made, shall be annexed to the record of the trial of the said issue.

Bills of exceptions to be allowed on trials of issues.

XVI. And be it enacted, that the record of the said issue, and of the verdict therein, shall be transmitted by the associate or other proper officer to the registrar of the said Court of Admiralty; and the verdict of the jury upon any such issue (unless the same shall be set aside) shall be conclusive upon the said Court, and upon all such persons; and in all further proceedings in the cause in which such fact is found the said Court shall assume such fact to be as found by the jury.

Record of the issue to be transmitted to the Court of Admiralty.

XVII. And be it enacted, that every person who, if this Act had not been passed, might have appealed and made suit to Her Majesty in Council against any proceeding, decree, or sentence of the said High Court of Admiralty under or by virtue of an Act passed in the third year of the reign of his late Majesty, intituled "An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council," may in like manner appeal and make suits to her Majesty in Council against the proceedings, decrees, and sentences of the said Court in all suits instituted and proceedings had in the same by virtue of the provisions of this Act, and that all the provisions of the said last-mentioned Act shall apply to all appeals and suits against the proceedings, decrees, and sentences of the said Court in suits instituted and proceedings had by virtue of the provisions of this Act; and such appeals and suits shall be proceeded in in the manner and form provided by an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better Administration of Justice in His Majesty's Privy Council;" and all the provisions of the said last-mentioned Act relating to appeals and suits from the High Court of Admiralty shall be applied to appeals and suits from the said Court in suits instituted and proceedings had by virtue of the provisions of this Act: Provided always, that in any such appeal the notes of evidence taken as hereinbefore provided by or under the

Provisions of 2 & 3 W. 4, c. 92, as to appeals to apply to suits in Court of Admiralty under this Act.

3 & 4 W. 4, c. 41, to apply in same manner.

Certified notes of evidence

taken may be admitted on appeal.

direction of the judge of the said High Court of Admiralty shall be certified by the said judge to Her Majesty in Council, and shall be admitted to prove the oral evidence given in the said Court of Admiralty, and that no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as aforesaid, but this proviso shall not enure to prevent the Judicial Committee of the Privy Council from directing witnesses to be examined and re-examined upon such facts as to the Committee shall seem fit, in the manner directed by the last-recited Act.

Power for Judge of Admiralty to make rules of Court.

XVIII. And be it enacted, that it shall be lawful for the judge of the said High Court of Admiralty from time to time to make such rules, orders, and regulations respecting the practice and mode of proceeding of the said Court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and from time to time to repeal or alter such rules, orders, or regulations: Provided always, that no such rules, orders, or regulations shall be of any force or effect until the same shall have been approved by Her Majesty in Council.

Protection of the judge of the Court of Admiralty.

XIX. And be it declared and enacted, that no action shall lie against the judge of the said High Court of Admiralty for error in judgment, and that the said judge shall be entitled to and have all privileges and protections in the exercise of his jurisdiction as judge of the said Court which by law appertain to the judges of Her Majesty's superior courts of common law in the exercise of their several jurisdictions.

Gaolers to receive prisoners committed by the Court of Admiralty or by Admiralty coroners.

XX. And be it enacted, that the keeper for the time being of every common gaol or prison shall be bound to receive and take into his custody all persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any coroner appointed by the judge of the said Court of Admiralty, upon any inquest taken within or upon the high seas adjacent to the county or other jurisdiction to which such gaol or prison belongs; and every keeper of any gaol or prison who shall refuse to receive into his custody any person so committed, or wilfully or carelessly suffer such person to escape and go at large without lawful warrant, shall be liable to the like penalties and consequences as if such person had been committed to his custody by any other lawful authority.

Prisoners in contempt may be discharged.

XXI. And be it enacted, that it shall be lawful for the judge of the said High Court of Admiralty to order the discharge of any person who shall be in custody for contempt of the said Court, for any cause other than for nonpayment of money, on such conditions as to the judge shall seem just: Provided always, that the order for such discharge shall not be deemed to have purged the original contempt in case the conditions on which such order shall be made be not fulfilled.

Jurisdiction to

XXII. And be it enacted, that the said High Court of Admiralty

shall have jurisdiction to decide all matters and questions concerning booty of war, or the distribution thereof, which it shall please Her Majesty, her heirs and successors, by the advice of her and their Privy Council, to refer to the judgment of the said Court ; and in all matters so referred the Court shall proceed as in cases of prize of war, and the judgment of the Court therein shall be binding upon all parties concerned.

try questions concerning booty of war.

XXIII. Provided always, and be it enacted, that nothing herein contained shall be deemed to preclude any of Her Majesty's Courts of law or equity now having jurisdiction over the several subject matters and causes of action hereinbefore mentioned from continuing to exercise such jurisdiction as fully as if this Act had not been passed.

Jurisdiction of Courts of law and equity not taken away.

XXIV. And be it enacted, that this Act may be repealed or amended by any Act to be passed in this Session of Parliament.

Act may be amended this session.

B.

3 & 4 VICT. CAP. 66.

An Act to make Provision for the Judge, Registrar, and Marshal of the High Court of Admiralty of England. [7th August, 1840.]

WHEREAS the present manner of remunerating the Judge, Registrar, and Marshal of the High Court of Admiralty of England ought not to be continued, and it is expedient to make other provision for the same, and for defraying the other expenses incidental to the said Court : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that a yearly salary of four thousand pounds shall be paid to the judge of the said High Court of Admiralty, and such salary shall be payable quarterly, and shall be charged upon and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland : Provided always that any such judge, after the present Parliament, shall during his continuance in office as judge be incapable of being elected or sitting as a member of the House of Commons.

Judge of the High Court of Admiralty to be paid by salary.

Not to sit in future parliaments.

II. And be it enacted, that an Act passed in the fiftieth year of the reign of King George the Third, intituled " An Act for regulating the offices of Registrars of Admiralty and Prize Courts, is hereby repealed, and that the registrar of the High Court of Admiralty shall receive out of the Fee Fund hereinafter mentioned, a yearly salary of fourteen hundred pounds, instead of all fees, dues, perquisites, emoluments, and profits heretofore received by or on account of or for such registrar

Repeal of 50 G. 3. c. 118.

Registrar to be paid by salary.

R

as aforesaid : Provided always, that in time of war or other extraordinary circumstances causing a great increase of business in the office of Registrar of the Court it shall be lawful for Her Majesty, on the recommendation of the judge of the High Court of Admiralty, to direct that the yearly salary of the said registrar be increased to such sum, not exceeding two thousand pounds, as Her Majesty shall be pleased to direct ; and such increased salary shall thenceforward continue to be paid to the said registrar, instead of his salary as fixed by this Act, and subject to all the provisions respecting the same, until Her Majesty shall be pleased to direct that such increased salary be again reduced.

Appointment
of registrar.

III. And be it enacted, that the person last before the passing of this Act executing the duties of deputy registrar of the said Court shall be the first registrar thereof under and by virtue of this Act, and he shall hold the same during his good behaviour, subject to be removed by the judge of the said Court for good and reasonable cause, such removal to be approved of by the Lord High Admiral of the United Kingdom of Great Britain and Ireland for the time being, or by the Lords Commissioners for executing the office of Lord High Admiral, as the case may be ; and every registrar hereafter to be appointed for the said High Court of Admiralty shall be appointed, and for good and reasonable cause be removable, by the judge of the said Court, such appointment and removal respectively being subject to the approbation of the said Lord High Admiral or the said Lords Commissioners, as the case may be ; and every such registrar shall be taken from among proctors practising in the said Court, and of ten years' standing at least.

Registrar shall
attend the
Privy Council
at the hearing
of causes and
appeals instead
of the registrar
of the Court of
Chancery.
3 & 4 W. 4, c.
41.

IV. Provided always, and be it further enacted, that the first registrar under and by virtue of this Act, and every registrar to be hereafter appointed shall, subject to such orders as Her Majesty in Council shall from time to time make, attend the hearing by the Judicial Committee of the Privy Council of all causes and appeals which the registrar of the High Court of Admiralty was entitled to attend in person or by deputy by virtue of his office of registrar of the High Courts of Admiralty, delegates, and appeals for prizes, before the passing of an Act passed in the third and fourth years of his late Majesty King William the Fourth, intituled "An Act for the better Administration of Justice in Her Majesty's Privy Council," and likewise shall, subject to any order of Her Majesty in Council, transact, perform, or do all acts, matters, and things that shall be found necessary or have heretofore been done by the said registrar or his deputies in respect of such causes and appeals.

Marshal to be
paid by salary.

V. And be it enacted, that the Marshal of the High Court of Admiralty shall receive out of the Fee Fund hereinafter mentioned a yearly salary of five hundred pounds, besides such travelling and other expenses necessarily incurred in the execution of his duty as

the judge of the Admiralty Court, with the approbation of the commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, shall allow, instead of all fees, dues, perquisites, emoluments, and profits heretofore received by or on account of such marshal: Provided always, that in time of war and other extraordinary circumstances causing a great increase in the business of the office of marshal of the Court, it shall be lawful for Her Majesty, on the recommendation of the judge of the Court, to direct that the yearly salary of the marshal be increased to such sum, not exceeding eight hundred pounds, as Her Majesty shall be pleased to direct; and such increased salary shall thenceforward continue to be paid to the marshal instead of his salary as fixed by this Act, and subject to all the provisions respecting the same, until Her Majesty shall be pleased to direct that such increased salary be again reduced.

Salary may be increased in time of war.

VI. And be it enacted, that the judge of the High Court of Admiralty, subject to the approval of the Lord High Admiral, or any three or more of the commissioners for executing the office of Lord High Admiral, shall appoint so many officers as he shall think necessary for executing the process of the said Court, and also so many clerks and servants as he shall think necessary for carrying on the business of the said Court; and the said judge, with the like approval, may remove, at pleasure, all or any of the clerks, officers, and servants so appointed; and the commissioners of Her Majesty's Treasury shall fix the salaries of all such clerks and servants; and the officers for executing the process of the Court shall be paid such allowances, and such travelling and other expenses necessarily incurred in the execution of their duty, as the judge of the Admiralty Court, with the approbation of the commissioners of Her Majesty's Treasury, shall allow; and the salaries of all the clerks and servants, and all such allowances and expenses, and all other expenses of carrying on the business of the said Court, not otherwise provided for, shall be paid out of the Fee Fund hereinafter mentioned, and shall be allowed in the account to be rendered by the registrar as hereinafter provided.

Clerks, &c., to be appointed by judge, subject to approval of Lord High Admiral.

VII. And be it enacted, that it shall be lawful for Her Majesty by letters patent under the great seal of Great Britain, to give and grant an annuity, not exceeding the yearly sum of two thousand pounds, to any person who shall have executed the office of judge of the High Court of Admiralty, and shall have resigned the same, to be paid quarterly, and to be charged upon and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, such annuity to commence from the time at which such judge of the said Court shall have resigned his said office, and to continue thenceforth during the natural life of the grantee: Provided always, that no such annuity shall be granted unless either

Retiring pension to judge.

the grantee shall have been judge of the said Court during at least fifteen years, or unless such person shall be afflicted with some permanent infirmity disabling him from the due execution of his said office, which shall be expressly recited in the grant : Provided also, that if the grantee of any such annuity shall hold any other office of profit under Her Majesty he shall be entitled to receive so much only of the said annuity as, together with the salary and profits of such other office, shall not exceed the sum of two thousand pounds.

Salaries and annuities, how to be paid.

VIII. And be it enacted, that the said salaries and annuities shall be paid, free and clear of all fees, taxes, and charges whatsoever, by four equal quarterly payments, on the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year : Provided that the payment to be made in each case on the first of the said quarterly days which shall happen after the accrual of the right thereunto of the person receiving the same under this Act shall be a rateable proportion of a quarter's salary according to the time then elapsed since the accrual of such right ; and in case of vacancy in the office of any judge, registrar, or marshal, or of any clerk, officer, or servant, receiving a salary under this Act, whose salary is fixed by this Act, of the High Court of Admiralty, the person making the vacancy, his executors or administrators, shall be entitled to a proportional part of his quarterly salary according to the time elapsed between the vacancy and the last quarterly payment.

Office of registrar not to be executed by deputy.

IX. And be it enacted, that the office of registrar of the High Court of Admiralty shall not in future be executed by deputy, except in case of illness or absence for any cause to be allowed by the judge, but the person appointed registrar shall, by himself, or with an assistant, in case an assistant shall be necessary, personally execute the duties thereof : Provided always, that the judge, surrogate, commissioner, or other substitute of the judge, may, according to the established law and practice of the said Court, from time to time, and as occasion may require, assume an actuary for the purpose of recording Acts : Provided also, that the said registrar may, with the approbation of the judge, from time to time appoint such and so many proctors of the said Court as may be deemed necessary, to be examiners thereof.

Appointment of deputy registrar in case of illness, &c.

X. And be it enacted, that it shall be lawful for the said registrar, from time to time as occasion may require, to appoint a deputy or assistant, being a proctor of the said Court, to act for the said registrar, in case of his absence from illness or other reasonable cause allowed by the judge, such deputy or assistant to be first approved by the judge of the High Court of Admiralty ; and no such deputy or assistant shall continue to act for any longer time than shall be allowed and specified in and by the order which shall be made by, on each occasion, the judge of the High Court of Admiralty : Pro-

vided, that in case any registrar of the said Court who shall be prevented by illness from giving his personal attendance shall omit for the space of two days to appoint such deputy or assistant, the judge of the High Court of Admiralty shall, if he shall see fit, himself appoint such deputy or assistant, and direct what part of the salary of such registrar shall be received by such deputy or assistant, and the same shall be paid over to and received by him accordingly.

XI. And be it enacted, that at any time when the state of the business of the said Court shall appear to require the appointment of an assistant registrar, the judge of the High Court of Admiralty may direct the registrar to make such appointment; and such assistant registrar, being one of the proctors of the said Court, shall thereupon be appointed by the registrar, subject to the approval of the judge of the Court, and for such time as the judge may think necessary, and shall be entitled to receive a salary, not exceeding twelve hundred pounds, as Her Majesty shall be pleased to direct, which salary in either case shall be paid out of the same fund and be subject to the same provisions as are herein enacted with respect to the payment of the salary of the registrar.

Judge of Admiralty may direct the appointment of an assistant registrar;

his salary.

XII. Provided always, and be it further enacted, that the judge of the High Court of Admiralty shall cause to be laid on the table of the House of Commons, within fourteen days of making the increase of salaries of the appointments hereinafter mentioned, if Parliament shall be then assembled, or if Parliament shall not be sitting then within fourteen days next after the assembling thereof, an account of all increase of salaries made under the authority of this Act, and of all appointments of officers, clerks, and servants made under this Act, by the said judge, with the consent or approbation of the Lord High Admiral or commissioners for executing the office of the Lord High Admiral, or by the registrar with the consent or approbation or by the direction of the said judge, with an account of the salaries directed to be paid to such officers, clerks, and servants.

Account of increase in salaries and appointments to be laid on the Table of the House of Commons.

XIII. And be it declared and enacted, that it shall be lawful for Her Majesty to regulate the fees of the said Court, and to amend and alter the Table of Fees therein, as by Her Majesty, with the advice of Her Privy Council, shall be thought fit.

Her Majesty may alter the Table of Fees.

XIV. And be it enacted, that the registrar of the High Court of Admiralty shall, on or before the twentieth day of January in every year, render to the Lord High Treasurer or the commissioners of Her Majesty's Treasury, upon oath, to be sworn before the judge of the High Court of Admiralty or a surrogate of the said Court, a true account in writing of the gross and net amount of all such fees and emoluments as shall have become due in the preceding year ending on the fifth day of January on account of the judge of the said Court, by virtue of his office as such judge, or on account of the marshal or any other officer of the said Court, specifying the

Registrar to account annually for all fees received by him.

particulars of the payments, disbursements, allowances, and charges constituting the difference between such gross and net amounts, and also a like account of all the fees, dues, perquisites, emoluments, and profits received by or on account of or for the registrar of the said Court of Admiralty ; and the marshal, seal-keeper, and every other officer of the Court, in the receipt of any fees for business done in the said Court, shall render to the registrar upon oath, to be sworn before the judge or a surrogate of the Court, a true account in writing of all the fees respectively received by each of them, at such times and subject to such regulations as the judge of the Court from time to time shall think fit to direct.

Fees to be
carried to Fee
Fund.

XV. And be it enacted, that all the fees so received on account of the judge and marshal or any other officer of the Court of the said High Court of Admiralty, and also all the fees, dues, emoluments, perquisites, and profits received by or on account of the said registrar after the expiration of the interest at present vested in possession in the said office of registrar, shall be carried by the registrar to an account to be opened and kept in the Bank of England of a fund to be called, "The Fee Fund of the High Court of Admiralty ;" and out of the said Fee Fund there shall be paid by the said registrar, at the times and in the manner hereinbefore directed, the salaries of the registrar, assistant registrar, and marshal, and of the clerks, officers, and servants of the said Court, and all expences of holding and carrying on the business of the said Court not otherwise provided for ; and in case there shall be at any time a deficiency in the said Fee Fund, so that the same shall not be sufficient to discharge the several salaries and sums of money hereinbefore charged thereon, the judge of the High Court of Admiralty shall, by writing under his hand and seal, certify to the Lord High Treasurer, or to the commissioners of Her Majesty's Treasury, the amount of such deficiency ; and the Lord High Treasurer, or any three of such commissioners, shall forthwith, upon the receipt of such certificate, direct that there be issued and paid out of and charged upon the Consolidated Fund of the United Kingdom of Great Britain and Ireland, to the principal or deputy registrar of the said Court, on account of the Fee Fund of the said Court, such a sum of money as shall be sufficient to cover the deficiency so certified to them as aforesaid.

Surplus to be
paid to the
Consolidated
Fund.

XVI. And be it enacted, that when and so often from time to time as the said Fee Fund shall amount to such a sum as shall be sufficient to pay all the salaries and sums of money hereinbefore charged thereupon, and there shall be a surplus remaining after such payment, the registrar of the High Court of Admiralty shall, once in every quarter of a year, (that is to say,) on or before the twentieth day of April, the twentieth day of July, the twentieth day of October, and the twentieth day of January, pay such surplus (if

any) into the Bank of England, to the credit of Her Majesty's Exchequer, to the account of the said Consolidated Fund.

XVII. And be it enacted, that it shall be lawful for the commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, and they are hereby authorized and required, by warrant under their hands or the hands of any three of them, to direct the several payments aforesaid to be made out of the Consolidated Fund as hereinbefore prescribed.

Treasury, by warrant, to direct payments out of Consolidated Fund.

XVIII. And be it enacted, that neither the judge nor any future registrar, assistant registrar, or marshal of the High Court of Admiralty, shall be entitled to, or take for his own use or benefit directly or indirectly, any fee or emolument whatsoever, save the salary, allowance, or annuity, to which he shall be entitled by virtue of this Act.

Judge and registrar to receive no fees on their own account.

XIX. And be it enacted, that in case the said Lord High Treasurer, or any three or more commissioners of Her Majesty's Treasury, for the time being, shall be dissatisfied with any account to be rendered to them as aforesaid, it shall be lawful for him or them to refer the same to the judge of the High Court of Admiralty and to the dean of the Arches, or to either of them, who shall thereupon, by such ways and means and by the examination of such persons as they or he shall think fit, and upon oath, if they or he shall think the same necessary, (which he or they is and are hereby authorized to administer,) inquire into the said accounts, or any entry therein, and all or any of the disbursements, allowances, or charges therein contained, and make such allowances and disallowances therein as he or they shall think reasonable, and shall finally settle and certify in writing the net amount of the fees and emoluments to which such account relates.

Accounts may be referred to judge of Court of Admiralty and to Dean of Arches.

XX. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

Act may be amended.

C.

24 VICT., CAP. 10.

An Act to extend the Jurisdiction and improve the Practice of the High Court of Admiralty. [17th May, 1861.]

WHEREAS it is expedient to extend the jurisdiction and improve the practice of the High Court of Admiralty of England: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.	1. This Act may be cited for all purposes as the "The Admiralty Court Act, 1861."
Interpretation of terms.	2. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them ; that is to say, "Ship" shall include any description of vessel used in navigation not propelled by oars : "Cause" shall include any cause, suit, action, or other proceeding in the Court of Admiralty.
Commencement of Act.	3. This Act shall come into operation on the first day of June, one thousand eight hundred and sixty-one.
As to claims for building, equipping, or repairing of ships.	4. The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or the proceeds thereof are under arrest of the Court.
As to claims for necessities.	5. The High Court of Admiralty shall have jurisdiction over any claim for necessities supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales : Provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court.
As to claims for damage to cargo imported.	6. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales : Provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court.
As to claims for damage by any ship.	7. The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship.
High Court of Admiralty to decide questions as to ownership, &c. of ships.	8. The High Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof

to be sold, and may make such order in the premises as to it shall seem fit.

9. All the provisions of "The Merchant Shipping Act, 1854," in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat where the services have been rendered either wholly or in part in British waters.

Extending
17 & 18 Vict.
c. 104, as to
claims for sal-
vage of life.

10. The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship: Provided always, that if in any such cause the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court.

As to claims
for wages and
for disburse-
ments by
master of a
ship.

11. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854," whether the ship or the proceeds thereof be under arrest of the said Court or not.

3 & 4 Vict.
c. 65,
in regard to
mortgages
extended to
Court of
Admiralty.
Sections 62 to
65 of 17 & 18
Vict. c. 104,
extended to
Court of
Admiralty.

12. The High Court of Admiralty shall have the same powers over any British ship, or any share therein, as are conferred upon the High Court of Chancery in England by the sixty-second, sixty-third, sixty-fourth, and sixty-fifth sections of "The Merchant Shipping Act, 1854."

Part 9 of
17 & 18 Vict.
c. 104,
extended to
Court of
Admiralty.

13. Whenever any ship or vessel, or the proceeds thereof, are under arrest of the High Court of Admiralty, the said Court shall have the same powers as are conferred upon the High Court of Chancery in England by the ninth part of "The Merchant Shipping Act, 1854."

Court to be a
Court of record.

14. The High Court of Admiralty shall be a Court of Record for all intents and purposes.

Decrees and
orders of Court
of Admiralty
to have effect
of judgments
at Common
Law.

15. All decrees and orders of the High Court of Admiralty, whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the same effect as judgments in the Superior Courts of Common Law, and the persons to whom any such monies, or costs, charges, or expenses, shall be payable, shall be deemed judgment creditors, and all powers of enforcing judgments possessed by the Superior Courts of Common Law, or any judge thereof, with respect to matters depending in the same Courts, as well against the ships and goods arrested as against the person of the judgment debtor, shall be possessed by the said Court of Admiralty with respect to matters therein depending; and all remedies at Common Law possessed by judgment creditors shall be in like

manner possessed by persons to whom any monies, costs, charges, or expenses are by such orders or decrees of the said Court of Admiralty directed to be paid.

As to claims to goods taken in execution.

16. If any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or by any person not being the party against whom the process has issued, the registrar of the said Court may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said Court both the party issuing such process and the party making the claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or inferior Court, in respect of such claim, seizure, act, or matter as aforesaid, shall be stayed, and the Court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Admiralty Court, and the judge of the said Admiralty Court shall adjudicate upon the claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in the said Court. Where any such claim shall be made as aforesaid, the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in case of dispute, to be by the officer paid into Court to abide the decision of the judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained, and in default of the claimant so doing the officer may sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale, to abide the decision of the judge.

Powers of Superior Courts extended to Court of Admiralty.

17. The judge of the High Court of Admiralty shall have all such powers as are possessed by any of the Superior Courts of Common Law or any judge thereof to compel either party in any cause or matter to answer interrogatories, and to enforce the production, inspection, and delivery of copies of any document in his possession or power.

Party in Court of Admiralty may apply for an order for

18. Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said Court for an order for the inspection by the Trinity Masters or others appointed for the trial

of the said cause, or by the party himself or his witnesses, of any ship or other personal or real property, the inspection of which may be material to the issue of the cause, and the Court may make such order in respect of the costs arising thereout as to it shall seem fit.

inspection by
Trinity Masters.

19. Any party in a cause in the High Court of Admiralty may call on any other party in the cause by notice in writing to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable.

Admission of
documents.

20. Whenever it shall be made to appear to the judge of the High Court of Admiralty that reasonable efforts have been made to effect personal service of any citation, monition, or other process issued under seal of the said Court, and either that the same has come to the knowledge of the party thereby cited or monished, or that he wilfully evades service of the same, and has not appeared thereto, the said judge may order that the party on whose behalf the citation, monition, or other process was issued be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge may seem fit, and all proceedings thereon shall be as effectual as if personal service of such citation, monition, or other process had been effected.

Power to Court
of Admiralty,
when personal
service of
citation has not
been effected,
to order parties
to proceed.

21. The service in any part of Great Britain or Ireland of any writ of subpoena ad testificandum or subpoena duces tecum, issued under seal of the High Court of Admiralty, shall be as effectual as if the same had been served in England or Wales.

As to the
service of sub-
poena out of
England and
Wales.

22. Any new writ or other process necessary or expedient for giving effect to any of the provisions of this Act may be issued from the High Court of Admiralty in such form as the judge of the said Court shall from time to time direct.

Power to
issue new writs
or other pro-
cess.

23. All the powers possessed by any of the Superior Courts of Common Law or any judge thereof, under the Common Law Procedure Act, 1854, and otherwise, with regard to references to arbitration, proceedings thereon, and the enforcing of awards of arbitrators, shall be possessed by the judge of the High Court of Admiralty in all causes and matters depending in the said Court, and the registrar of the said Court of Admiralty shall possess as to such matters the same powers as are possessed by the masters of the said Superior Courts of Common Law in relation thereto.

Judge and
registrar
to have same
power as to
arbitration as
judges and
masters at
Common Law.

24. The registrar of the High Court of Admiralty shall have the same powers under the fifteenth section of the Merchant Shipping Act, 1854, as are by the said section conferred on the Masters of Her Majesty's Court of Queen's Bench in England and Ireland.

Section 15 of
17 & 18 Vict.
c. 104, extended
to registrar of
Court of Ad-
miralty.

25. The registrar of the High Court of Admiralty may exercise,

Powers of

registrar and of deputy or assistant registrar.

with reference to causes and matters in the said Court, the same powers as any surrogate of the judge of the said Court sitting in Chambers might or could have heretofore lawfully exercised; and all powers and authorities by this or any other Act conferred upon or vested in the registrar of the said High Court of Admiralty may be exercised by any deputy or assistant registrar of the said Court.

False oath or affirmation deemed perjury.

26. The registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said Court; and any person who shall wilfully depose or affirm falsely in any proceeding before the registrar or before any deputy or assistant registrar of the said Court, or before any person authorized to administer oaths in the said Court, shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

Appointment of registrar and of deputy or assistant registrar.

27. Any advocate, barrister-at-law, proctor, attorney, or solicitor of ten years' standing may be appointed registrar or assistant or deputy registrar of the said Court.

Appointment of examiners.

28. Any advocate, barrister-at-law, proctor, attorney, or solicitor may be appointed an examiner of the High Court of Admiralty.

Stamp duty not payable on subsequent admissions of proctors or solicitors.

29. Any person who shall have paid on his admission in any Court as a proctor, solicitor, or attorney the full stamp duty of twenty-five pounds, and who has been or shall hereafter be admitted a proctor, solicitor, or attorney (if in other respects entitled to be so admitted), shall be liable to no further stamp duty in respect of such subsequent admission.

Proctor may act as agent of solicitors.

30. Any proctor of the High Court of Admiralty may act as agent of any attorney or solicitor, and allow him to participate in the profits of and incident to any cause or matter depending in or connected with the said Court; and nothing contained in the Act of the fifty-fifth year of the reign of King George the Third, chapter one hundred and sixty, shall be construed to extend to prevent any proctor from so doing, or to render him liable to any penalty in respect thereof.

2 Hen. 4, c. 11, repealed.

31. The Act passed in the second year of the reign of King Henry the Fourth, intituled "A remedy for him who is wrongfully pursued in the Court of Admiralty," is hereby repealed.

Power of appeal in interlocutory matters.

32. Any party aggrieved by any order or decree of the judge of the said Court of Admiralty, whether made *ex parte* or otherwise, may, with the permission of the judge, appeal therefrom to Her Majesty in Council, as fully and effectually as from any final decree or sentence of the said Court.

Bail given in the Court of Admiralty good in the Court of appeal.

33. In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of the said Court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has

been given ; and in any appeal from any decree or order of the High Court of Admiralty the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal.

34. The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence ; and if in the principal cause the ship of the defendant has been arrested or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the principal cause, until security has been given to answer judgment in the cross cause.

As to the hearing of causes and cross causes.

35. The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam.

Jurisdiction of the Court.

D.

26 VICT., CAP. 24.

An Act to facilitate the Appointment of Vice Admirals and of Officers in Vice Admiralty Courts in Her Majesty's Possessions abroad, and to confirm the past Proceedings, to extend the Jurisdiction, and to amend the Practice of those Courts. [8th June, 1863.]

WHEREAS it is expedient to facilitate the appointment of Vice admirals and of officers in Vice Admiralty Courts in Her Majesty's possessions abroad, and to confirm the past proceedings, to extend the jurisdiction, and to amend the practice of those Courts : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the " Vice Admiralty Courts Act, 1863." Short title.

2. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them : that is to say, Interpretation of terms.

" Her Majesty " shall mean Her Majesty, her heirs and successors :

The "Admiralty" shall mean the Lord High Admiral or the commissioners for executing his office :

"British possession" shall mean any colony, plantation, settlement, island, or territory being a part of Her Majesty's dominions, but not being within the limits of the United Kingdom of Great Britain and Ireland, or of Her Majesty's possessions in India :

"Governor" shall mean the officer for the time being lawfully administering the government of any British possession :

"Vice Admiralty Court" shall mean any of the existing Vice Admiralty Courts enumerated in the schedule marked A. hereto annexed, or any Vice Admiralty Court which shall hereafter be established in any British possession :

"Ship" shall include every description of vessel used in navigation not propelled by oars only, whether British or foreign :

"Cause" shall include any cause, suit, action, or other proceeding instituted in any Vice Admiralty Court.

Appointment
of Vice Admiral.

3. In any British possession, where the office of Vice admiral is now or shall at any time hereafter become vacant, the governor of such possession shall be ex officio Vice admiral thereof, until a notification is received in the possession that a formal appointment to that office has been made by the Admiralty in the manner hereinafter mentioned.

Appointment
of judge.

4. In any British possession, where the office of judge of a Vice Admiralty Court is now or shall at any time hereafter become vacant, the chief justice, or the principal judicial officer of such possession, or the person for the time being lawfully authorized to act as such, shall be ex officio judge of the Vice Admiralty Court, until a notification is received in the possession that a formal appointment to that office has been made by the Admiralty in the manner hereinafter mentioned.

Appointment
of registrar and
marshal.

5. In any British possession, where the office of registrar or marshal of any Vice Admiralty Court is now or shall at any time hereafter become vacant, the judge of the Court may, with the approval of the governor, appoint some person to the vacant office, until a notification is received in the possession that a formal appointment thereto has been made by the Admiralty in the manner hereinafter mentioned, and may, for good and reasonable cause, to be approved by the governor, remove the person so appointed. The judge may also appoint some person to act as registrar or marshal during the temporary absence of either of those officers.

Names of
appointees, &c.
to be notified
to the home
government.

6. On any vacancy in the office of judge, registrar, or marshal of any Vice Admiralty Court, the governor of the British possession in which the Court is established shall, as soon as is practicable, communicate to one of Her Majesty's principal Secretaries of State

the fact of the vacancy, and the name of the person succeeding or appointed to the vacant office.

7. Nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any Vice admiral, or any judge, registrar, marshal, or other officer of any Vice Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under seal of the High Court of Admiralty of England. Saving the powers of the Admiralty.

8. No act done by any person in the capacity of judge, registrar, or marshal of any Vice Admiralty Court, which shall not have been set aside by any competent authority before the passing of this Act, shall be held invalid by reason that such person had not been duly appointed, but all such Acts shall be as valid and effectual as if done by a person duly appointed. Past proceedings confirmed.

9. No action, prosecution, or other proceeding shall be brought against any such person by reason of the illegality or informality of any Act hereby declared to be valid and effectual. Protection of officers.

10. The matters in respect of which the Vice Admiralty Courts shall have jurisdiction are as follow : Jurisdiction of Vice Admiralty Courts.

- (1.) Claims for seamen's wages :
- (2.) Claims for master's wages, and for his disbursements on account of the ship :
- (3.) Claims in respect of pilotage :
- (4.) Claims in respect of salvage of any ship, or of life or goods therefrom :
- (5.) Claims in respect of towage :
- (6.) Claims for damage done by any ship :
- (7.) Claims in respect of bottomry or respondentia bonds :
- (8.) Claims in respect of any mortgage where the ship has been sold by a decree of the Vice Admiralty Court, and the proceeds are under its control :
- (9.) Claims between the owners of any ship registered in the possession, in which the Court is established, touching the ownership, possession, employment, or earnings of such ship :
- (10.) Claims for necessities supplied, in the possession in which the Court is established, to any ship of which no owner or part owner is domiciled within the possession at the time of the necessities being supplied :
- (11.) Claims in respect of the building, equipping, or repairing within any British possession of any ship of which no owner or part owner is domiciled within the possession at the time of the work being done.

11. The Vice Admiralty Courts shall also have jurisdiction—

- (1.) In all cases of breach of the regulations and instructions relating to Her Majesty's navy at sea : Jurisdiction of Vice Admiralty Courts.
- (2.) In all matters arising out of droits of Admiralty.

12. Nothing contained in this Act shall be construed to take away Nothing to re-

- strict existing jurisdictions. or restrict the jurisdiction conferred upon any Vice Admiralty Court by any Act of Parliament in respect of seizures for breach of the revenue, customs, trade, or navigation laws, or of the laws relating to the abolition of the slave trade, or to the capture and destruction of pirates and piratical vessels, or any other jurisdiction now lawfully exercised by any such Court; or any jurisdiction now lawfully exercised by any other Court within Her Majesty's dominions.
- As to matters arising beyond limits of colony. 13. The jurisdiction of the Vice Admiralty Courts, except where it is expressly confined by this Act to matters arising within the possession in which the Court is established, may be exercised, whether the cause or right of action has arisen within or beyond the limits of such possession.
- Her Majesty empowered to establish and alter rules and tables of fees. 14. Her Majesty may, by Order in Council, from time to time establish rules touching the practice to be observed in the Vice Admiralty Courts, as also tables of the fees to be taken by the officers and practitioners thereof for all acts to be done therein, and may repeal and alter the existing and all future rules and tables of fees, and establish new rules and tables of fees in addition thereto, or in lieu thereof.
- Rules and tables of fees to be laid before the House of Commons. 15. A copy of any rules or tables of fees which may at any time be established shall be laid before the House of Commons within three months from the establishing thereof, or if Parliament shall not be then sitting, or if the session shall terminate within one month from that date, then within one month after the commencement of the next session.
- To be entered in the records of the Courts. 16. The rules and tables of fees in force in any Vice Admiralty Court shall, as soon as possible after they have been received in the British possession in which the Court is established, be entered by the registrar in the public books or records of the Court, and the books or records in which they are so entered shall at all reasonable times be open to the inspection of the practitioners and suitors in the Court.
- To be hung up in Court, &c. 17. A copy of the rules and tables of fees in force in any Vice Admiralty Court shall be kept constantly hung up in some conspicuous place as well in the Court as in the office of the registrar.
- Established fees to be the only fees taken. 18. The fees established for any Vice Admiralty Court shall, after the date fixed for them to come into operation, be the only fees which shall be taken by the officers and practitioners of the Court.
- Taxation may be revised by the High Court of Admiralty. 19. Any person who shall feel himself aggrieved by the charges of any of the practitioners in any Vice Admiralty Court, or by the taxation thereof by the officers of the Court, may apply to the High Court of Admiralty of England to have the charges taxed, or the taxation thereof revised.
- Registrar may administer oaths. 20. The registrar of any Vice Admiralty Court shall have power to administer oaths in relation to any matter depending in the

Court; and any person who shall wilfully swear falsely in any proceeding before the registrar, or before any other person authorised to administer oaths in the Court, shall be deemed guilty of perjury, and shall be liable to all the penalties attaching to wilful and corrupt perjury.

21. If a cause of damage by collision be instituted in any Vice Admiralty Court, and the defendant institute a cross cause in respect of the same collision, the judge may, on application of either party, direct both causes to be heard at the same time and on the same evidence; and if the ship of the defendant in one of the causes has been arrested, or security given by him to answer judgment, but the ship of the defendant in the other cause cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the former cause until security has been given to answer judgment in the latter cause.

As to the hearing of cross causes.

22. The appeal from a decree or order of a Vice Admiralty Court lies to Her Majesty in Council; but no appeal shall be allowed, save by permission of the judge, from any decree or order not having the force or effect of a definitive sentence or final order.

No appeal save from final sentence or order.

23. The time for appealing from any decree or order of a Vice Admiralty Court shall, notwithstanding any existing enactment to the contrary, be limited to six months from the date of the decree or order appealed from; and no appeal shall be allowed where the petition of appeal to Her Majesty shall not have been lodged in the registry of the High Court of Admiralty and of appeals within that time, unless Her Majesty in Council shall, on the report and recommendation of the judicial committee of the privy council, be pleased to allow the appeal to be prosecuted, notwithstanding that the petition of appeal has not been lodged within the time prescribed.

Appeal to be made within six months.

24. The Acts enumerated in the schedule hereto annexed marked B. are hereby repealed, to the extent therein mentioned, but the repeal thereof shall not affect the validity of any rules, orders, regulations, or tables of fees heretofore established and now in force, in pursuance of the Act of the second and third William the Fourth, chapter fifty-one; but such rules, orders, regulations, and tables of fees shall continue in force until repealed or altered under the provisions of this Act.

Acts repealed. Saving rules established under 2 & 3 W. 4, c. 51.

SCHEDULE A.

List of the existing Vice Admiralty Courts to which this Act applies.

Antigua.	British Honduras.
Bahamas.	Cape of Good Hope.
Barbadoes.	Ceylon.
Bermuda.	Dominica.
British Columbia.	Falkland Islands.
British Guiana.	Gambia River.

APPENDIX.

Gibraltar.	Nova Scotia, otherwise Halifax.
Gold Coast.	Prince Edward Island.
Grenada.	Queensland.
Hong Kong.	Saint Christopher.
Jamaica.	Saint Helena.
Labuan.	Saint Lucia.
Lagos.	Saint Vincent.
Lower Canada, otherwise Quebec.	Sierra Leone.
Malta.	South Australia.
Mauritius.	Tasmania, formerly called Van
Montserrat.	Diemen's Land.
Natal.	Tobago.
Nevis.	Trinidad.
New Brunswick.	Vancouver's Island.
Newfoundland.	Victoria.
New South Wales.	Virgin Islands, otherwise Tortola.
New Zealand.	Western Australia.

SCHEDULE B.

ACTS AND PARTS OF ACTS REPEALED.

Reference to Act.	Title of Act.	Extent of Repeal.
56 Geo. III. c. 82.	An Act to render valid the Judicial Acts of Surrogates of Vice Admiralty Courts abroad, during Vacancies in Office of Judges of such Courts.	The whole Act, save as regards Her Majesty's Possessions in India.
5 Geo. IV. c. 113.	An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade.	Section 29, save as above.
2 & 3 Will IV. c. 51.	An Act to regulate the Practice and the Fees in the Vice Admiralty Courts abroad, and to obviate Doubts as to their Jurisdiction.	The whole Act, save as above.
6 & 7 Vict. c. 38.	An Act to make further Regulations for facilitating the hearing Appeals and other Matters by the Judicial Committee of the Privy Council.	Section 11, so far as it relates to Appeals from Vice Admiralty Courts, save as above.
17 & 18 Vict. c. 37.	An Act for establishing the Validity of certain Proceedings in Her Majesty's Court of Vice Admiralty in Mauritius.	The whole Act.

E.

30 & 31 VICT., CAP. 45.

An Act to extend and amend the Vice Admiralty Courts Act, 1863.
[15th July, 1867.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as "The Vice Admiralty Courts Act Amendment Act, 1867." Short title.

2. This Act shall be read as one Act with the Vice Admiralty Courts Act, 1863. 26 & 27 Vict.
c. 24, applied.

3. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them ; that is to say, Interpretation
of terms.

"Judge" shall mean the person lawfully appointed by the Admiralty to be judge of any Vice Admiralty Court, or, in default of such appointment, the chief justice or principal judicial officer, or the person for the time being lawfully authorised to act as the chief justice or principal judicial officer in the British possession in which such Court is established :

"Judicial Powers" shall mean all powers and authorities which may be lawfully exercised by, and all duties by law imposed upon, any such judge in the trial, hearing, or progress of any cause :

"Ministerial Powers" shall mean all powers and authorities which may be lawfully exercised by, and all duties by law imposed upon, any such judge, not included under the term "Judicial Powers :"

"Sit" or "Sitting" shall mean sit or sitting for the exercise of judicial powers, whether in Court or in Chambers.

4. On the governor of any British possession, who is also vice-admiral thereof, vacating the office of governor of such possession, the office of vice-admiral of the same possession shall thereupon be deemed to be also vacant within the meaning of the third section of the Vice Admiralty Courts Act, 1863. Tenure of office
of vice-admiral.

5. The judge of any Vice Admiralty Court may from time to time, with the approval in writing of the governor of the British possession in which the Court is established, appoint one or more deputy judge or judges to assist or represent him in the execution of his judicial powers. Judge may
appoint deputy
judges.

6. It shall be lawful for any such deputy judge to exercise all the judicial powers of the judge ; and all acts done by such deputy judge Judicial powers
of deputy
judges.

- shall be as valid and effectual, to all intents and purposes, as if they had been done by the judge ; and all orders or decrees made by such deputy judge shall be subject to the same right of appeal in all respects as if they had been made by the judge.
- Deputy judges may sit separately.** 7. Any deputy judge may sit at the principal seat of government or elsewhere in the possession at the same time that the judge or any other deputy judge is sitting, and either at the same or at any other place in such possession, and whether the judge is or is not at that time within the possession.
- Judge may sit with deputy judges.** 8. The judge may, if he thinks fit, require any such deputy judge or judges to sit with him in the same Court, and in such case the decision of the majority, or, if they are equally divided in opinion, the decision of the judge, shall be the decision of the Court ; and such decision shall be subject to the same right of appeal in all respects as if it had been made by the judge alone.
- Judge to regulate the proceedings.** 9. The judge may direct at what place and time any such deputy judge shall sit, and what causes shall be heard before him, and generally make such arrangements as to him shall seem proper as to the division and despatch of the business of the Court.
- Tenure of office of deputy judges.** 10. The judge may, if he thinks fit, with the approval in writing of the governor, at any time revoke the appointment of any such deputy judge or judges, but the appointment shall not be determined by the occurrence of a vacancy in the office of the judge.
- Judge may delegate ministerial powers.** 11. The judge may, if he thinks fit, from time to time delegate all or any of his ministerial powers to any such deputy judge or judges.
- Judge may appoint deputy registrars and marshals.** 12. The judge may from time to time, if he thinks fit, appoint any competent persons to act respectively as deputy registrars and deputy marshals of the Court, and may, if he thinks fit, at any time revoke any such appointment, but the appointment shall not be determined by the occurrence of a vacancy in the office of the judge.
- Admiralty may revoke appointments.** 13. Notwithstanding anything contained in this Act, it shall be lawful for the Admiralty, if they think fit, at any time to revoke the appointment of any deputy judge, deputy registrar, or deputy marshal appointed under this Act.
- Deputies to receive fees.** 14. Any deputy judge, deputy registrar, or deputy marshal, appointed under this Act, shall be entitled to the same fees in respect of any duty performed by him as would be lawfully payable to the judge, registrar, or marshal respectively for the performance of the same duty.
- Barristers and solicitors entitled to practise in Vice Admiralty Courts.** 15. All persons entitled to practise as advocates, barristers-at-law, proctors, attorneys-at-law, or solicitors in the superior Courts of a British possession, shall be entitled to practise in the same respective capacities in the Vice Admiralty Court or Courts of such possession, and shall have therein all the rights and privileges respectively belonging to advocates, barristers-at-law, proctors, attorneys-at-law,

and solicitors, and shall in like manner be subject to the authority of the person for the time being lawfully exercising the office of judge of such Court.

16. It shall be lawful for Her Majesty to empower the Admiralty, by commission under the Great Seal, to establish one or more Vice Admiralty Courts in any British possession, notwithstanding that such possession may have previously acquired independent legislative powers; and the jurisdiction and authority of all the existing Vice Admiralty Courts are hereby declared to be confirmed, to all intents and purposes, notwithstanding that the possession in which any such Court has been established may at the time of its establishment have been in possession of legislative powers.

Her Majesty may establish a Vice Admiralty Court in a possession having legislative powers.

17. The Vice Admiralty Courts Act, 1863, shall, together with this Act, apply to any Vice Admiralty Court now established or hereafter to be established in the Straits Settlements.

Extended to the Straits Settlements.

18. The limitation of the time allowed for appeals contained in the twenty-third section of the Vice Admiralty Courts Act, 1863, shall be held to apply to all decrees or orders pronounced in any Vice Admiralty Court now established or hereafter to be established in any of Her Majesty's possessions in India.

26 & 27 Vict. c. 24. s. 23. extended to appeals from Vice-Admiralty Courts in Indian possessions.

F.

30 & 31 VICT. CAP. 114.

An Act to extend the Jurisdiction, alter and amend the Procedure and Practice, and to regulate the Establishment of the Court of Admiralty in Ireland. [20th August, 1867.]

WHEREAS it is expedient to extend the jurisdiction and alter and amend the procedure and practice of the High Court of Admiralty of Ireland; to alter the mode of appealing therefrom; to regulate the establishment of the Court, and to substitute stamps for Court fees therein:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as "The Court of Admiralty (Ireland) Act, 1867." Short title.

2. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject) the following terms shall Interpretation of terms.

have the respective meanings hereinafter assigned to them ; that is to say,

"Ship" shall include any description of vessel used in navigation not exclusively propelled by oars :

"Cause" shall include any cause, suit, action, matter, or other proceeding in the Court of Admiralty of Ireland :

"The Court of Admiralty" shall mean the Court of Admiralty of Ireland :

"The Judge" shall mean the judge of the said Court of Admiralty for the time being :

"Her Majesty in Council" shall mean Her present Majesty, Her heirs or successors, in the Privy Council in England :

"The Lord Chancellor" shall mean and include the Lord High Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of Ireland for the time being :

"Local Court" shall mean and include the Court of the Recorder of the borough of Cork, the Court of the Recorder of the borough of Belfast, and the Court of any other Recorder, or of any chairman of Quarter Sessions in Ireland, to whom jurisdiction in Admiralty cases shall be given by virtue of this Act.

Commence-
ment of Act.

3. Except with respect to the appointment of officers, in which respect this Act shall take effect from its passing, this Act shall take effect from and immediately after the second day of November, one thousand eight hundred and sixty-seven (which time is in this Act referred to as the commencement of this Act).

Sects. 1, 2,
and 3, of
23 & 24 G. 3.
c. 14. (Irish),
and so much
of sect. 1 of
2 & 3 W. 4.
c. 116, as
relates to the
salary of the
judge of the
Admiralty
Court of
Ireland, and
sect. 14 of
20 & 21 Vict.
c. 79, repealed.
Cesser of
offices.

4. From and after the commencement of this Act, the first, second, and third sections of the Act passed by the Parliament of Ireland of the twenty-third and twenty-fourth years of the reign of King George the Third, chapter fourteen, and so much of the first section of the Act of the second and third years of the reign of King William the Fourth, chapter one hundred and sixteen, as relates to the salary of the judge of the Admiralty Court in Ireland, and the fourteenth section of "The Probates and Letters of Administration Act (Ireland), 1857," shall be and the same are respectively hereby repealed.

5. From and after the commencement of this Act, the present judge, registrar (if any), marshal, and seal keeper of the High Court of Admiralty of Ireland shall cease to hold their respective offices.

PART I.—COURT AND OFFICERS.

One judge and
one registrar of
Court.

6. There shall be one judge of the High Court of Admiralty of Ireland, and one registrar, who shall also act as seal keeper and secretary of the judge, and one marshal of the said Court.

7. It shall be lawful for Her Majesty, her heirs and successors, from time to time, by letters patent under the great seal of Ireland, to appoint a person, being or having been an advocate of the Court of Admiralty of Ireland, or a barrister-at-law of not less than fifteen years' standing, to be such judge; and the said judge shall hold his office during good behaviour, but may be removed by Her Majesty, her heirs or successors, on an address of both Houses of Parliament; and the said judge shall have full power and authority to hear and determine all manner of civil, maritime, and other causes to the jurisdiction of the said Court now belonging, and shall also have such jurisdiction as is hereinafter by this Act given to the said Court of Admiralty.

Appointment of judge.

8. Every judge of the Court of Admiralty shall, before executing any of the duties of his office, take the following oath, which the Lord Chancellor or the Master of the Rolls for the time being is hereby respectively authorized and required to administer:

Judge before acting to take the following oath.

‘I A. B. do solemnly and sincerely promise and swear, that I will
‘duly and faithfully, and to the best of my skill and power,
‘execute the office of judge of the High Court of Admiralty of
‘Ireland.

‘So help me GOD.’

9. No judge appointed under this Act shall during his continuance in such office be capable of being elected or sitting as a member of the House of Commons, nor shall he during such period practise as an advocate or barrister-at-law.

Judge not to sit in Parliament or practise as an advocate or barrister.]

10. The Lord Lieutenant or other chief governor or governors of Ireland may from time to time, by warrant under his hand, appoint a fit person, being an advocate, barrister-at-law, proctor, attorney, or solicitor of ten years' standing, to be the registrar of said Court, and also one other fit person to be the marshal of said Court; and the persons so appointed shall hold their respective offices by the same tenure as officers serving in an established capacity in the permanent Civil Service of the State, but shall be removable by the order of the Lord Chancellor, at the instance of the judge of the said Court of Admiralty, for some reasonable cause to be expressed in the said order.

Power to lord lieutenant to appoint registrar and marshal.

11. The registrar of the said Court of Admiralty shall attend the hearing by the Court of Appeal in Chancery of all appeals preferred thereto by virtue of this Act, and (subject to any order of the said Court of Appeal in Chancery) shall transact and do all such acts and things as have heretofore been done by the registrar of appeals and provocations spiritual in the High Court of Delegates in Ireland in cases of appeal to that Court from the said Court of Admiralty.

Registrar to attend the Court of Appeal in Chancery.

12. From and after the commencement of this Act, the registrar and all other officers of the said Court of Admiralty shall perform

Officers not to execute their duties by

deputy, except
in case of
illness, &c.

their duties in person, and not by deputy, except in case of temporary illness or other reasonable cause allowed by the judge : Provided always, that in case any officer of the said Court of Admiralty shall be prevented by temporary illness or other reasonable cause allowed as aforesaid from attending to his duties, the judge may appoint a fit and proper person to act as the deputy of such officer ; and no such deputy shall continue to act for any longer time than shall be allowed and specified in and by the order to be made on each such occasion by the judge ; and all the powers and authorities of the officer in whose place any such deputy shall be appointed may be exercised by such deputy during the time while he shall be so authorized to act as aforesaid.

No officer of
the Court to
practise
therein.

13. No registrar or other officer of the said High Court of Admiralty, save the marshal, nor any clerk of said Court, shall, during the time of his holding such office, directly or indirectly, practise as an advocate, barrister, proctor, solicitor, or attorney, or as clerk to any proctor, solicitor, or attorney, or participate in the fees of any other person so practising ; and the marshal of said Court shall not, directly or indirectly, practise therein, or participate in the fees of any other person so practising.

Power to judge
to appoint
chief clerk
to registrar
and other
clerks.

14. It shall be lawful for the judge of the said Court of Admiralty, with the approval of the commissioners of Her Majesty's Treasury, to appoint a chief clerk to assist in the duties of the registrar's office, and such other clerk or clerks as may be necessary for the business of the said Court, and such chief clerk, clerk or clerks, shall hold their respective offices by the same tenure as officers serving in an established capacity in the permanent Civil Service of the State, but shall be removable by the order of the judge of the said Court, with the concurrence of the Lord Chancellor, for some reasonable cause to be stated in the said order.

Crier, tipstaff,
and servants.

15. It shall be lawful for the judge of the said Court of Admiralty from time to time to appoint a crier and tipstaff to be attached to the said Court, and, with the approval of the commissioners of Her Majesty's Treasury, such servants as may be required for the said Court ; and such crier, tipstaff, and servants shall hold their respective offices and situations during the pleasure of the said judge.

Salaries of
judge and
officers.

16. The salaries of the judge and officers of the said Court of Admiralty shall be as follows ; namely,—

Of the judge, twelve hundred pounds a year ;

Of the registrar, five hundred pounds a year ;

Of the marshal, four hundred pounds a year ; besides such travelling and other expenses necessarily incurred in the execution of his duty as the judge, with the approval of the commissioners of Her Majesty's Treasury, shall allow.

Of the chief clerk in the registrar's office and the clerks of the said Court, and of the crier, tipstaff, and servants of

the said Court, such salaries respectively as the judge, with the consent of the commissioners of Her Majesty's Treasury, shall appoint.

17. Her Majesty, by letters patent under the great seal of the United Kingdom, may grant unto any person executing the office of judge in pursuance of this Act an annuity not exceeding eight hundred pounds, to commence immediately after the period when the person to whom such annuity shall be granted shall resign the said office of judge, and to continue from thenceforth during the natural life of the person to whom the same shall be granted; provided that it shall be lawful for Her Majesty, in and by such letters patent, to limit the duration of payment of such annuity or any part thereof to the periods of time during the natural life of such person in which he shall not exercise any office of profit under Her Majesty, so that such annuity, together with the salary and profits of such other office, shall not exceed in the whole the said sum of eight hundred pounds; provided also, that no annuity granted to any person having executed the office of judge under this Act shall be valid, unless such person shall have continued in the said office, or in such office and in the office of judge of the present Court of Admiralty, or some other judicial office, for the period of fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

Retiring
pension to
judge.

18. In case the present judge of the Court of Admiralty be not appointed to the office of judge of the said Court under this Act, he shall be entitled to receive by way of compensation during his life an annuity equal to his salary at the commencement of this Act; and such annuity shall be charged on and payable out of the Consolidated Fund of the United Kingdom; and in case any other person who shall cease by the provisions of this Act to hold any office in the said Court be not appointed to some office of not less emolument under this Act, it shall be lawful for the commissioners of Her Majesty's Treasury to grant to such person such special annual allowance and in such manner as by the seventh section of "The Superannuation Act, 1859," is provided in case of persons whose offices have been abolished.

Compensation
to judge, and
any officer of
present Court
of Admiralty
not reappointed
under this Act.

19. Any officer of the said Court of Admiralty who shall resign his office shall be entitled to receive such superannuation allowance as the commissioners of Her Majesty's Treasury shall think proper to direct; and in ascertaining and awarding the amount of such superannuation allowance the said commissioners shall take into consideration the whole period during which any such person shall have been permanently employed in the said office or in any other public office, and shall proceed according to the principles laid down by "The Superannuation Act, 1859."

Power to judge
to appoint
superannuation
of officers.

20. The salary of the judge of the said Court of Admiralty, and

Salary of judge
and compensa-

tions to be charged on Consolidated Fund ; other salaries, &c., out of monies to be provided by Parliament.

Court to be a Court of Record.

Protection of the judge of Court of Admiralty.

Power to the judge to appoint a surrogate.

Power to judge to appoint " clerk in Court."

Barristers-at-law, attorneys-at-law, and

any retiring annuity granted to a judge of the said Court under this Act, shall be charged on and payable out of the Consolidated Fund of the United Kingdom ; and the salaries of all officers or servants of the said Court, and any superannuation allowance which may be granted to any such officer or servant under this Act, shall be paid out of such funds as Parliament shall from time to time provide for that purpose.

21. The Court of Admiralty shall be a Court of Record for all intents and purposes.

22. No action shall lie against the judge of the said Court of Admiralty for error in judgment, and the judge shall be entitled to and have all the privileges and protection in the exercise of his jurisdiction as judge of the said Court which by law appertain to the judges of Her Majesty's Superior Courts of Common Law in the exercise of their several jurisdictions.

23. The judge of the said Court of Admiralty shall be entitled, as heretofore, to appoint, with the consent of the Lord Chancellor of Ireland, a surrogate, being an advocate or barrister of not less than ten years' standing, who, in case of the illness or absence of the judge, or in any cause in which the judge, his wife or child, or any member of his family, shall have an interest, and also during any period which shall be specified by any general order of the Court, may sit for the judge, and exercise all his powers.

24. It shall be lawful for the judge of the said Court of Admiralty, with the consent of the commissioners of Her Majesty's Treasury, from time to time to appoint a competent writer of shorthand to attend the Court for the purpose of taking down and transcribing all such evidence, statements, and matters as the judge shall direct ; and any person so appointed shall hold office during the pleasure of the said judge, and shall be paid such annual salary as the commissioners of Her Majesty's Treasury, on the recommendation of the judge, shall appoint ; and there shall be charged, as part of the costs in any cause in the said Court, such fees for copies of the minutes of any evidence taken down by such shorthand writer during the progress of such cause as shall be appointed by general orders, and sanctioned by the commissioners of Her Majesty's Treasury ; and there shall be one such copy made in every cause for the use of the Court, and certified as true and correct by such shorthand writer, and filed as a Record of the Court ; and the fees payable therefor shall be charged as Court fees, and be paid for by such party in the first instance, and in such manner as shall be directed by general orders, and shall be deemed to be part of such party's costs in the cause.

25. All barristers-at-law, and all attorneys-at-law and solicitors, shall, from and after the time when this Act shall come into operation, be entitled to practise as barristers, attorneys, and solicitors respec-

tively in all matters and causes whatsoever in the said Court of Admiralty; and the said barristers-at-law shall and may have and exercise the same rights and privileges of practising in the said Court of Admiralty as advocates now have and enjoy in the said Court; and the said attorneys and solicitors shall and may have and exercise the same rights and privileges of practising in the said Court of Admiralty, as proctors now have and enjoy in the said Court; and the said advocates and barristers-at-law shall have respectively the same rank and precedence in the said Court of Admiralty which they now have in the Superior Courts of Common Law, unless and until Her Majesty shall otherwise order: Provided always, that all attorneys-at-law and solicitors practising in the Court of Admiralty shall be subject to the authority of the judge in the like manner as attorneys of the Queen's Bench are subject to the authority of that Court: Provided also, that the Queen's Advocate General in the Court of Admiralty for the time being shall have and retain the same rights, rank, and precedence in that Court as he now has therein by virtue of his said office.

solicitors to be at liberty to practise in High Court of Admiralty.

26. Whereas William Russell Kelly has been lately admitted a proctor of the said Court of Admiralty, and Charles Taylor, John Chambers Hamerton, Henry Albert Lee, and John Mallins have been duly articulated as apprentices to proctors of the said Court of Admiralty: It is hereby enacted, that the said William Russell Kelly may, within six months from the coming of this Act into operation, and that each of them the said Charles Taylor, John Chambers Hamerton, Henry Albert Lee, and John Mallins, who shall complete the full term of service for which he has been bound as such apprentice, may, within six months thereafter, be admitted, without any further apprenticeship, and without the payment of any stamp duty, fee, charge, or gratuity whatsoever, as a solicitor of the High Court of Chancery in Ireland; and upon the production of an official certificate of his being admitted or qualified to be admitted as a proctor of the said Court of Admiralty, and upon signing the roll of solicitors of the said Court of Chancery, each of the persons in this clause above named shall respectively be entitled to be admitted a solicitor of that Court, and to be afterwards in like manner admitted and enrolled as an attorney of Her Majesty's Superior Courts of Law in Ireland.

Admission of Wm. Russell Kelly and of articulated apprentices as attorneys and solicitors.

PART II.—JURISDICTION OF THE COURT.

27. Subject to the provisions of "The Merchant Shipping Act, 1854," and "The Merchant Shipping Amendment Act, 1862," the Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, and to enforce the payment thereof, whether the service in respect of which salvage is claimed were

Jurisdiction in cases of salvage.

- performed upon the high seas or within the body of any county, or partly in the one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.
- Jurisdiction in cases of towage.** 28. The Court of Admiralty shall have jurisdiction to decide all claims and demands in the nature of towage, and to enforce the payment thereof, whether such towage was performed within the body of a county or upon the high seas.
- Jurisdiction in cases of damage.** 29. The Court of Admiralty shall have jurisdiction over any claims for damages received or done by any ship, whether within the body of a county or not.
- As to claims for building, &c., of ships.** 30. The Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship.
- Jurisdiction of the Court in claims for necessaries.** 31. The Court of Admiralty shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs.
- Court of Admiralty to decide questions as to ownership, &c., of ships.** 32. The Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners or any of them touching the title to or the ownership, possession, employment, and earnings of any ship registered at any port in Ireland, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof to be sold, and may make such order in the premises as to it shall seem fit.
- As to claims for wages and for disbursements by master of a ship.** 33. The Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship.
- Provisions of 3 & 4 Vict. c. 65, in regard to mortgages extended to Court.** 34. The Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854," whether the ship or the proceeds thereof be under arrest of the said Court or not.
- Sections 62 to 65 of 17 & 18 Vict. c. 104, extended to Court.** 35. The Court of Admiralty shall have the same powers over any British ship, or any share therein, as are conferred upon the High Court of Chancery in Ireland by the sixty-second, sixty-third, sixty-fourth, and sixty-fifth sections of "The Merchant Shipping Act, 1854."
- Part 9 of 17 & 18 Vict. c. 104, extended to Court.** 36. The Court of Admiralty shall have the same powers as are conferred upon the High Court of Chancery in Ireland by the ninth part of "The Merchant Shipping Act, 1854."
- Extension of jurisdiction of Court of** 37. The Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in Ireland in any ship for damage

done to the goods, or any part thereof, by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of, the owner, master, or crew of the ship.

Admiralty over ships and goods.

38. The jurisdiction conferred by this Act may be exercised either by proceedings in *rem* or by proceedings in *personam*.

Court may exercise jurisdiction in *rem* or in *personam*.

39. General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the High Court of Admiralty and of the local Courts, and the forms of writs, warrants, summonses, processes, and proceedings therein or issuing therefrom, and the duties of the judges and officers thereof, and the fees to be taken therein.

Practice, &c., to be regulated by general orders.

40. General orders under this Act shall be made by the judge of the Court of Admiralty, with the approval of the Lord Chancellor, and, as far as they relate to fees, or receipt and expenditure of and accounting for money, with the approval of the commissioners of Her Majesty's Treasury; and any general orders under this Act may be made at any time after the passing of this Act.

Authority for making general orders.

41. The judge of the Court of Admiralty shall have all such powers as are possessed by any of the superior Courts of Common Law in Ireland, or any judge thereof, to compel either party in any cause or matter to answer interrogatories, and to enforce the production, inspection, and delivery of copies of any document in his possession or power.

Certain powers of superior Courts extended to Court.

42. The keeper for the time being of any common gaol or prison shall be bound to receive or take into his custody all persons who shall be committed thereunto by the said Court of Admiralty; and every keeper of any gaol or prison who shall refuse to receive into his custody any person so committed, or wilfully or negligently suffer such person to escape or go at large without lawful warrant, shall be liable to the like penalties and consequences as if such person had been committed to his custody by any other lawful authority.

Gaolers to receive prisoners committed by Court of Admiralty.

43. It shall be lawful for the judge to order the discharge of any person who shall be in custody for contempt of the said Court, or for any other cause other than nonpayment of money, on such conditions as to the judge shall seem just: Provided always, that the order for such discharge shall not be deemed to have purged the original contempt in case the conditions on which such order shall be made be not fulfilled.

Prisoners in contempt may be discharged.

44. All the powers possessed by any of the superior Courts of Common Law, or any judge thereof, under "The Common Law Procedure Act, 1856," and otherwise with regard to references to arbitration, proceedings thereon, and the enforcing of awards of arbitrators, shall be possessed by the judge of the Court of Admiralty in all cases and matters depending in the said Court; and the registrar of the said Court of Admiralty shall possess as to such matters the

Judge and registrar to have same power as to arbitration as judges and masters at Common Law.

same powers as are possessed by the masters of the said superior Courts of Common Law in relation thereto.

Section 15 of
17 & 18 Vict.
c. 104, ex-
tended to
registrar of
Court of
Admiralty.

Registrar to
have power to
administer
oaths.

Restriction on
arrest of
property.

45. The registrar of the Court of Admiralty shall have the same powers under the fifteenth section of "The Merchant Shipping Act, 1854," as are by the said section conferred on the masters of Her Majesty's Court of Queen's Bench in England and Ireland.

46. The registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said Court, and shall have also such other powers as may be given him for the discharge of his functions as registrar by any rule, order, or regulation to be made in pursuance of this Act.

47. The party at whose instance any property is arrested under a warrant of the High Court of Admiralty shall be liable to be condemned in all costs and expenses occasioned thereby, and in damages for the detention of the property, unless he shows to the satisfaction of the Court that he could not, without such arrest, have obtained bail or other security for the sum in which the cause is instituted, or that he had otherwise good and sufficient reason for having caused the issue and execution of the warrant of arrest.

PART III.—PRACTICE AND PROCEDURE.

1.—*Payment of Money into Court, &c.*

Money payable
into Court to
be lodged in
the Bank of
Ireland.

48. All money payable into the Court of Admiralty under any order of the Court shall be lodged, under orders of the Court, to be made from time to time, in the Bank of Ireland, to an account there to be opened in the name of the registrar of the High Court of Admiralty of Ireland, to the credit of the cause in which such order may be made, and the same shall not be drawn out therefrom save in pursuance of an order of the Court, by the cheque or draft of the said registrar, countersigned by the judge.

2.—*Evidence.*

Rules of
evidence in
Common Law
Courts to be
observed.

Power to
examine
vidē voce in
open Court.

49. The rules of evidence observed in the superior Courts of Common Law shall be applicable to and observed in the trial of all matters and facts in the Court of Admiralty.

50. In any cause depending in the Court of Admiralty, the Court, if it shall think fit, may summon before it and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition or before a commissioner, as hereafter mentioned, and notes of such evidence shall be taken down in writing by the judge or registrar, or by such other person or persons and in such manner as the judge of the said Court shall direct.

Evidence may
be taken *vidē*

51. The Court may, if it shall think fit, by order in any such suit, appoint some person, being a barrister-at-law of not less than seven

years' standing, an examiner to take evidence in such suit by word of mouth upon oath, which every such examiner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts, and in such manner, order, and course, and under such limitations and restrictions, and to transmit the same to the registry of the said Court in such form and manner, as in and by the said order shall be directed; and such examiner shall be attended, and the witnesses shall be examined, cross-examined, and re-examined, by the parties, their counsel, solicitors, attorneys, or agents, if such parties or either of them shall think fit so to do; and such examiner shall, if need be, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the said Court of Admiralty is hereby authorized to institute such proceedings and make such order or orders upon such report as justice may require, and as may be instituted or made in any case of contempt of the said Court.

52. It shall be lawful in any suit depending in the said Court of Admiralty for the judge or for any such examiner appointed in pursuance of this Act to require the attendance of any witness, and the production of any deeds, evidences, books, or writings, by writ to be issued by such judge or examiner in such form as shall be directed by the general orders to be made under this Act, or as nearly thereto as may be, and every person disobeying any such writ so to be issued by the said judge or examiner shall be considered as in contempt of the said Court of Admiralty, and may be punished for such contempt in the said Court.

Attendance of witnesses and production of books, &c., may be compelled by subpoena.

53. The judge of the Court of Admiralty may, and he is hereby empowered, from time to time, and as and when he may think fit, to appoint any person practising as a solicitor, attorney, or notary public in any part of Ireland, to administer oaths, and take declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the Court of Admiralty; and such persons shall be styled "Commissioners to administer oaths in Admiralty," and shall be entitled to charge and take a fee of one shilling and sixpence for every oath administered by them, and for every declaration, affirmation, and attestation taken by them, subject to any order of the judge of the said Court varying or annulling the same.

Judge of Admiralty may appoint solicitors, &c., to administer oaths, &c.

54. The fiat or document by which any such commissioner shall be appointed shall bear a stamp of one pound, and it shall not be necessary that any such appointment shall be published in the Dublin Gazette.

Commissioner's appointment to bear a stamp of one pound.

55. It shall not be necessary to sue out any commission to take the personal answer of any party in any cause in the Court of Admiralty; and any such answer may be filed without any further or other formality than is required in the swearing and filing of an affidavit.

Personal answers may be taken without a commission.

Answers,
affidavits, &c.,
how to be sworn
and taken in
Ireland.

56. All answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations in or relating to any matter, suit, or proceeding in the said Court of Admiralty may be sworn and taken in Ireland before any commissioner appointed as aforesaid, or before any commissioner to administer oaths in Chancery.

Answers.
affidavits, &c.,
how to be
sworn and
taken out of
Ireland.

57. All answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations in or relating to any cause in the said Court of Admiralty, may be sworn and taken in England, Scotland, or the Isle of Man, or the Channel Islands, or any of them, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any judge, court, commissioner, notary public, or person lawfully authorized to administer oaths in such country, island, or plantation or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the judge and other officers of the said Court of Admiralty shall take judicial notice of the seal or signature, as the case may be, of any such judge, court, commissioner, notary public, person, consul or vice-consul attached, appended, or subscribed to any such answers, examinations, affidavits, depositions on oath, declarations, affirmations, and attestations, or the documents to be used in the said Court.

Penalties for
false swearing.

58. All persons swearing, declaring, affirming, or attesting before any person authorized by this Act to administer oaths, and take declarations, affirmations, and attestations, shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein, as if the matter sworn, declared, affirmed, or attested before any Court, or person now by law authorized to administer oaths and take declarations, affirmations, and attestations.

Penalty for
forging
signature or
seal of judge,
&c., empow-
ered to
administer
oaths under
this Act.

59. If any person shall forge the signature or the official seal of any such judge, commissioner, court, notary public, consul or vice-consul, or other person lawfully authorized to administer oaths and take declarations, affirmations, or attestations under this Act, or shall tender in evidence any answers, examination, deposition on oath, declaration, affirmation, attestation, or other judicial or official document with a false or counterfeit signature or seal of any such commissioner, judge, court, notary public, consul or vice-consul, or other person authorized as aforesaid, attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act passed in the eighth and ninth years of the reign of Her present Majesty, intituled "An Act to facilitate the Admission in Evidence of certain official and other Documents."

60. Nothing herein contained shall abridge or lessen the power of the judge of the said Court of Admiralty, as it now exists, to issue commissions as heretofore, and to appoint fit persons to administer oaths, take affidavits, depositions on oath, declarations, affirmations, and attestations, and generally to execute any commissions, nor shall affect in any manner the power of the judge to administer oaths, and take affidavits, depositions on oath, declarations, affirmations, and attestations, as heretofore, in or relating to any cause in the said Court.

Power of judge to issue commissions as heretofore, to administer oaths, &c.

3.—*Issues and New Trials.*

61. In any contested cause depending in the said Court of Admiralty the said Court shall have power, if it shall think fit, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such cause, and the substance and form of such issue or issues shall be specified by the judge at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the judge to settle the same, and such trial shall be held before the judge himself, or before some judge of assize at Nisi Prius, as to the judge shall seem meet.

Power to direct issues.

62. The costs of such issues as the judge shall under this Act direct shall be paid by such party or parties, person or persons, and be taxed by the registrar of the said Court of Admiralty in such manner as the said judge shall direct, and payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said Court.

Costs of issues in discretion of Court.

63. The said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue, by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner hereinbefore directed with regard to the first trial of such issue, and may, by order of the same Court, direct such costs to be paid as to the said Court shall seem fit, upon any application for a new trial or upon any new trial or second or other new trial, and may direct by whom, and to whom, and at what times and in what manner such costs shall be paid.

Power to direct new trials.

64. The granting or refusing to grant an issue or a new trial of any such issue may be matter of appeal to the Court of Appeal in Chancery in Ireland.

Granting or refusing new trials matter of appeal.

65. The record of each such issue and of the verdict therein shall be transmitted by the proper officer to the registrar of the said Court of Admiralty; and the verdict of the jury upon any such issue (unless the same shall be set aside) shall be conclusive upon the said Court and upon the parties, and in all further proceedings in the

Record of the issue to be lodged with the Registrar.

cause in which such fact is found, the said Court shall assume such fact to be as found by the jury.

Party in Court may apply for an order for inspection by jurors.

66. Any party in a cause in the Court of Admiralty shall be at liberty to apply to the said Court for an order for the inspection by the nautical assessors or others appointed for the trial of any cause, or by the party himself or his witnesses, of any ship or other personal or real property the inspection of which may be material to the issue of the cause, and the Court may make such order in respect of the costs arising thereout as to it shall seem fit.

Admission of documents.

67. Any party in a cause in the Court of Admiralty may call on any other party in the cause by notice in writing to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit same the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable.

4.—Other Branches of Practice and Procedure.

Power of Court, when personal service of citation has not been effected, to order parties to proceed.

68. Whenever it shall be made to appear to the judge that reasonable efforts have been made to effect personal service of any citation, monition, or other process issued under seal of the said Court of Admiralty, and either that the same has come to the knowledge of the party thereby cited or monished, or that he wilfully evades service of the same and has not appeared thereto, the said judge may order that the party on whose behalf the citation, monition, or other process was issued be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge may seem fit, and all proceedings thereon shall be as effectual as if personal service of such citation, monition, or other process had been effected.

As to services out of Ireland.

69. The service in any part of the United Kingdom of any writ of subpoena ad testificandum or subpoena duces tecum, issued under seal of the Court of Admiralty, shall be as effectual as if the same had been served in Ireland.

Decrees and orders of Court of Admiralty to have effect of judgments at Common Law.

70. All decrees and orders of the Court of Admiralty, whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the same effect as judgments in the superior Courts of Common Law; and the persons to whom any such monies, or costs, charges, or expenses shall be payable, shall be deemed judgment creditors, and all powers of enforcing judgments possessed by the superior Courts of Common Law, or any judge thereof, with respect to matters depending in the same Courts, as well against the ships and goods arrested as against the person of the judgment debtor, shall be possessed by the said Court of Admiralty with respect to causes therein depending; and all remedies at Common

Law possessed by judgment creditors shall be in like manner possessed by persons to whom any monies, costs, charges, or expenses are by such orders or decrees of the said Court of Admiralty directed to be paid.

71. If any claim shall be made to any goods or chattels taken in execution under any process of the Court of Admiralty, or in respect of the seizure thereof, or any act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels by any landlord for rent, or by any person not being the party against whom the process has issued, the registrar of the said Court may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said Court both the party issuing such process and the party making the claim; and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or inferior Court, in respect of such claim, seizure, act, or matter as aforesaid, shall be stayed, and the Court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Court of Admiralty, and the judge of the said Court of Admiralty shall adjudicate upon the claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such order shall be enforced in like manner as any order made in any suit brought in the said Court. Where any such claim shall be made as aforesaid the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in case of dispute, to be by the officer paid into Court to abide the decision of the judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained; and in default of the claimant so doing the officer may sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale to abide the decision of the judge.

As to claims to goods taken in execution.

72. The Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested, or security given by him to answer judgment, and in the cross cause the ship of the plaintiff in the principal cause cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the principal cause until security has been given to answer judgment in the cross cause.

As to the hearing of causes and cross causes.

5.—*Assessors.*List of
assessors.

73. General orders may from time to time provide for the framing of lists of persons of mercantile or nautical skill and experience to act as assessors in the High Court of Admiralty and in the local Courts, and for the publication of the lists, and for the ascertainment of the cases in which assessors are to be summoned, and the mode in which, in each case, they are to be selected, and their functions, and the proceedings in the cases in which they sit, and their remuneration; and every person for the time being named in any such list shall give his attendance according to general orders.

PART IV.—JURISDICTION OF LOCAL COURTS.

Admiralty
jurisdiction of
local Courts.

74. The local Courts shall, in the cases following, have all the like civil and maritime jurisdiction (with all powers and authorities relative thereto) as for the time being belongs to the Court of Admiralty (otherwise than by way of appeal); that is to say,

- (1.) Where the amount or value of the money or thing in dispute does not exceed two hundred pounds:
- (2.) Where the amount or value of the money or thing in dispute exceeds two hundred pounds, but the parties agree by a memorandum signed by them, or by their attorneys or agents, that a local Court or Courts specified in the memorandum shall have jurisdiction:
- (3.) Where this Act provides for the retention or prosecution of a cause in a local Court:

A cause in which jurisdiction is by this Act given to the local Courts is in this Act referred to as an Admiralty cause.

Local Court
for commence-
ment of cause.

75. Subject to general orders, proceedings in an Admiralty cause in a local Court shall be commenced as follows:—

- (1.) In the local Court within the jurisdiction whereof the ship or goods to which the cause relates is or are at the commencement of the proceedings:
- (2.) If the foregoing rule is not applicable, then in the local Court in the district whereof an action should or might be commenced under the ordinary jurisdiction of the Court:
- (3.) In any case in the local Court, or one of the local Courts which the parties by a memorandum signed by them, or by their attorneys or agents, agree shall have jurisdiction.

Transfer from
local Court by
order of the
Court of
Admiralty.

76. The Court of Admiralty, on motion by any party to an Admiralty cause pending in a local Court, may, if it thinks fit, (with or without service and hearing of a summons to the other party, as it thinks fit,) transfer the cause to the Court of Admiralty, on such terms (if any) as to security for costs or other things as the Court thinks fit.

77. If during the progress of an Admiralty cause in a local Court it appears to the Court that the subject matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the validity of any order or decree theretofore made by the Court shall not be thereby affected, but (unless the parties agree by a memorandum signed by them, or their attorneys or agents, that the Court shall retain jurisdiction) the Court shall, by order, transfer the cause to the Court of Admiralty, which Court may nevertheless order that the cause shall be prosecuted in the local Court in which it was commenced, and it shall be thereupon remitted to such local Court and proceeded with therein.

Transfer by
order of
County Court.

78. If during the progress of an Admiralty cause in a local Court it appears to the Court that the cause could be more conveniently prosecuted in some other local Court or in the Court of Admiralty, the Court may, by order, transfer it to such other local Court or to the Court of Admiralty (as the case may be), and it shall be thereupon prosecuted accordingly.

Transfer to
other local
Court or Court
of Admiralty.

79. If any person takes proceedings in the High Court of Admiralty which he might (without agreement) have taken in a local Court, he shall not be entitled to receive costs in the High Court of Admiralty in any event, unless the judge shall otherwise direct, and shall be liable to be condemned in costs, if the judge shall so think fit.

Costs of
proceedings in
Court of
Admiralty.

80. In an Admiralty cause in a local Court the judge of such Court shall (in addition to his other powers and authorities) have all the like powers and authorities as the judge of the High Court of Admiralty.

Powers and
authorities of
judges of local
Courts.

81. The marshal of the Court of Admiralty shall be deemed an officer of all and every the local Courts in Admiralty causes pending in any of those Courts; and it shall be lawful for the commissioners of Her Majesty's Treasury, if they shall think fit, on the application of the judge, to award to the said marshal, by way of remuneration for the duties by this section imposed upon him, such annual or other sum as they shall deem reasonable, and such sum shall be paid out of the funds which Parliament shall provide for that purpose.

Marshal, &c.,
to act for
local Courts.

82. A scale of costs and charges in Admiralty causes in the local Courts shall be prescribed by general orders.

Scale of costs
in local Courts.

83. For the execution of any decree or order of a local Court in an Admiralty cause the Court may order, and the clerk of the peace on such order may issue, and any officer of the said Court may execute, any writ or warrant of arrest, possession, or execution, or other process.

Execution of
decrees, &c.

84. It shall be lawful for the lord lieutenant or other chief governor or governors of Ireland in council, from time to time, by order in council, made at any time after the passing of this Act, to declare that the recorder of any borough Court, or the chairman of any

Appointment
of special
Courts of
quarter
sessions for

Admiralty
jurisdiction.

Court of any quarter sessions therein, and not hereinbefore specified, shall have jurisdiction in Admiralty causes, which recorder or chairman shall have jurisdiction accordingly, and to assign to each such Court as its district for Admiralty causes any part or parts of any one or more district or districts in which such Court shall (independently of this Act) have jurisdiction, and in any such case to prescribe the places and times at which local Courts for Admiralty causes shall be holden.

Remuneration
to recorders of
Cork and
Belfast.

85. It shall be lawful for the commissioners of Her Majesty's Treasury, if they shall think fit, with the consent of the lord lieutenant or other chief governor or governors of Ireland, to award to the recorders of the boroughs of Cork and Belfast, as remuneration for the additional duty which they may respectively have to perform by virtue of this Act, such annual or other sums as they shall deem reasonable ; such sums shall be paid out of the funds which Parliament shall provide for that purpose.

Provision for
remuneration
of other
recorders and
chairmen.

86. When, under any such order in council as aforesaid, jurisdiction in Admiralty causes shall be given to any recorder of a borough or chairman of a county, it shall be lawful for the commissioners of Her Majesty's Treasury, if they shall think fit, with the consent of the lord lieutenant or other chief governor or governors of Ireland, to award such annual or other sum as they shall deem reasonable to such recorder or chairman, by way of remuneration for the additional duty which he may have to perform in consequence of such order, and such sum shall be paid out of the funds which Parliament shall provide for that purpose.

PART V.—APPEALS.

Appeal from
County Court
to Court of
Admiralty.

87. An appeal shall lie to the High Court of Admiralty from the final decree, order, or decision of a local Court in an Admiralty cause, and, by permission of the judge of the local Court, from any interlocutory decree, order, or decision therein, subject to such provisions respecting notice of appeal, deposit or other security for costs, and other matters, as general orders shall direct.

Time for
appeal from
County Court.

88. The time for so appealing shall be limited to fourteen days from the date of the decree, order, or decision appealed from ; and an appeal shall not be allowed unless the appeal is lodged in the registry of the High Court of Admiralty within that time, subject to this provision,—that the judge of the High Court of Admiralty may, if he think fit, allow an appeal to be prosecuted notwithstanding that the appeal has not been lodged within that time.

Agreement
not to appeal.

89. Provided, that such an appeal shall not lie if before or after the decree, order, or decision is made or given the parties agree, by a memorandum signed by them, or by their attorneys or agents, that the decree, order, or decision shall be final ; and any such agreement

need not be stamped, except in respect of any fee imposed by general orders.

90. From and after the commencement of this Act no appeal shall be brought from the Court of Admiralty to Her Majesty's delegates in the Court of Chancery in Ireland, commonly called the High Court of Delegates in Ireland. Appeal to the Court of Delegates abolished.

91. Any person considering himself aggrieved by any final or interlocutory sentence, decree, or order of the Court of Admiralty, except a sentence, decree, or order made by the judge upon an appeal from a local Court, may appeal therefrom to the Court of Appeal in Chancery in Ireland, and from thence to Her Majesty in Council : Provided nevertheless, that any such appeal from the Court of Admiralty may be brought to Her Majesty in Council in the first instance without interposing any appeal to the said Court of Appeal in Chancery ; and provided always, that no appeal from any interlocutory order of the Court of Admiralty shall be made without leave of the Court of Admiralty first obtained, but on the hearing of an appeal from any final sentence or decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree. Appeal given to Court of Appeal in Chancery and Privy Council.

92. From and after the commencement of this Act, save as to any appeal that shall be then pending, all the jurisdiction which is now possessed and exercised by the High Court of Delegates in Ireland, or which, but for the passing of this Act, would be possessed and exercised by that Court, in respect of appeals from the said Court of Admiralty, and all powers and authorities incident to such jurisdiction, now exercised and performed by the said High Court of Delegates, shall, subject to the provisions of this Act, be exercised and performed by the said Court of Appeal in Chancery in relation to appeals under this Act. Powers and jurisdiction of the Court of Appeal.

93. The Lord Chancellor and Lord Justice of Appeal in Ireland for the time being may from time to time make, rescind, and vary general orders for regulating the form and mode of procedure on appeals from the Court of Admiralty to the said Court of Appeal in Chancery, and for regulating the costs, fees, and allowances to be paid or allowed to solicitors or other persons respecting such appeals ; and such orders shall take effect at such times as may be therein specified, or in default of such specification from the time of making thereof. Power to the Court of Appeal in Chancery to make rules.

94. The said Court of Appeal in Chancery shall, on the hearing of any appeal from the Court of Admiralty, have power to call to its assistance one or more nautical assessors, to be selected by the said Court of Appeal ; and the advice and opinion of such nautical assessor or assessors may be taken by the said Court in the same manner, upon such questions, and for such objects as the advice and opinion of any nautical assessor now is or may be taken by the Judicial Committee of the Privy Council in appeals brought from the Power to the Court of Appeal in Chancery to call in nautical assessors.

High Court of Admiralty of England ; and the said Court of Appeal in Chancery shall have power to direct what remuneration shall be paid to each such assessor for his attendance on the hearing of any such appeal, and such remuneration shall be paid accordingly by such of the parties to the appeal as the said Court of Appeal shall in that behalf direct.

Evidence in the Court of Appeal in Chancery may be taken *viva voce* or upon written depositions.

Court of Appeal in Chancery may order any particular witness to be examined, and as to any particular facts, and may remit the cause for re-hearing.

95. In any appeal which shall come before the said Court of Appeal in Chancery by virtue of this Act, the said Court may examine witnesses by word of mouth (and either before or after examination by deposition), or direct that the depositions of any witness shall be taken in writing by the registrar, or by such other person or persons, and in such manner as the said Court shall direct.

96. In any appeal which shall come before the said Court of Appeal in Chancery by virtue of this Act, the said Court may direct that such witnesses shall be examined or re-examined, and as to such facts, as to the said Court shall seem fit, notwithstanding any such witness may not have been examined, or no evidence may have been given on any such facts in a previous stage of the matter, and may remit the cause to the Court of Admiralty, and at the same time direct that the said Court of Admiralty shall re-hear such cause, in such form, and either generally or upon certain points only, and upon such re-hearing take such additional evidence, though before rejected, or reject such evidence before admitted, as the Court of Appeal in Chancery shall direct ; and further, on any such remitting or otherwise, the Court of Appeal in Chancery may direct one or more issue or issues to be tried in any Court in any of Her Majesty's dominions abroad for any purpose for which such issue or issues shall to the said Court of Appeal in Chancery seem proper.

Witnesses to be examined on oath, and to be liable to punishment for perjury.

97. Every witness who shall be so examined in pursuance of this Act shall give his or her evidence upon oath, or, in cases in which an affirmation is allowed by law to be substituted for an oath, upon solemn affirmation, which oath and affirmation respectively shall be administered by the Court of Appeal in Chancery, and the registrar thereof, or such other person and persons as the said Court shall direct ; and every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury, and shall be punished accordingly.

Court of Appeal in Chancery may direct an issue to try any fact.

98. The said Court of Appeal in Chancery may direct one or more issue or issues to be tried in any Court of Common Law, and either before a judge of assize, or at the sittings for the trial of issues in Dublin, and either by a special or common jury, in like manner and for the same purpose as is now done by the High Court of Chancery of Ireland.

Court of Appeal in Chancery

99. It shall be in the discretion of the said Court of Appeal in Chancery to direct that, on the trial of any issue directed by it as aforesaid, the depositions already taken of any witness who shall have

died, or who shall be incapable to give oral testimony, shall be received in evidence; and further, that such deeds, evidences, and writings shall be produced, and that such facts shall be admitted, as to the said Court of Appeal in Chancery shall seem fit.

100. The said Court of Appeal in Chancery may make such and the like orders respecting the admission of persons, whether parties or others, to be examined as witnesses upon the trial of any such issue directed by it as aforesaid, as the Lord Chancellor or the Court of Chancery of Ireland has been used to make respecting the admission of witnesses upon the trial of issues directed by the Lord Chancellor or the Court of Chancery in Ireland.

101. The said Court of Appeal in Chancery may direct one or more new trial or trials of any issue, either generally or upon certain points only; and in case any witness examined at a former trial of the same issue shall have died, or have become incapable to repeat his testimony, the said Court of Appeal in Chancery may direct that parol evidence of the testimony of such witness shall be received.

102. All the powers and provisions contained in the thirteenth of George the Third, chapter sixty-three, and first of William the Fourth, chapter twenty-two, for the examination of witnesses, shall, with reference to cases of appeal from the said Court of Admiralty, extend to and be exercised by the said Court of Appeal in Chancery, as if that Court had been therein named as one of His Majesty's Courts of law at Westminster.

103. The costs incurred in the prosecution of any appeal preferred to the said Court of Appeal in Chancery, under the provisions of this Act, and of such issues as the same Court shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the registrar, or such other person or persons to be appointed by the same Court, and in such manner as the said Court shall direct.

104. The Court of Appeal in Chancery may require the attendance of any witnesses, and the production of any deeds, evidences, or writings, by writ, to be issued by the said Court, in such and the same form, or as nearly thereto as may be, as that in which a writ of subpoena ad testificandum or of subpoena duces tecum is now issued by Her Majesty's Court of Queen's Bench at Dublin; and every person disobeying any such writ so to be issued by the said Court of Appeal in Chancery shall be considered as in contempt of the same Court, and shall also be liable to such and the same penalties and consequences as if such writ had issued out of the said Court of Queen's Bench, and may be sued for such penalties in the same Court.

105. All the provisions contained in the several Acts for the time being in force relating to the appellate jurisdiction of Her Majesty's

may direct depositions to be read at trial of the issue;

may make such orders as to admission of evidence as are made by Court of Chancery;

and may direct new trials of issues.

Powers, &c., of 13 G. 3, c. 63, and 1 W. 4, c. 22, as to examination of witnesses extended to Court of Appeal in Chancery.

Costs to be in the discretion of Court of Appeal in Chancery.

Attendance of witnesses and production of papers may be enforced by subpoena.

The Privy Council em-

powered to determine appeals under this Act.

Privy Council in England, and the administration of justice therein, shall, so far as the same shall be applicable and consistent with the provisions of this Act, be deemed to extend to appeals preferred to Her Majesty in Council by virtue of the provisions of this Act; and the proceedings on all such appeals shall, so far as practicable, and consistent with the provisions of this Act, be proceeded with in the same manner as appeals from the High Court of Admiralty of England.

Bail given in the Court of Admiralty good in the Court of Appeal.

106. In any cause in the said Court of Admiralty bail may be taken to answer the judgment as well of the said Court as of the Court of Appeal, and the said Court of Admiralty may withhold the release of any property under its arrest until such bail has been given; and in any appeal from any decree or order of the Court of Admiralty, or of the said Court of Appeal in Chancery in any appeal thereto, preferred by virtue of this Act, the Court to which such appeal shall be brought may make and enforce its order against the surety or sureties who may have signed any such bailbond, in the same manner as if the bail had been given in the Court of Appeal.

Certified notes of evidence may be admitted on appeal.

107. In any appeal preferred by virtue of this Act the notes of evidence taken, as herein-before provided, by or under the direction of the judge of the Court of Admiralty, shall be certified by the judge to the Court to which such appeal is preferred, and shall be admitted to prove the oral evidence given in the Court of Admiralty; and no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as aforesaid: Provided always, that nothing herein contained shall enure to prevent the Court of Appeal in Chancery or the Judicial Committee of the Privy Council from directing witnesses to be examined and re-examined upon such facts as to the said Court of Appeal in Chancery or the Judicial Committee shall seem fit.

Notes of evidence on appeal to Court of Appeal in Chancery to be certified to the Privy Council.

108. In any appeal preferred by virtue of this Act from the said Court of Appeal in Chancery, the notes of evidence (if any) taken by or under the direction of that Court shall be certified by the Lord Chancellor to the said Judicial Committee of the Privy Council, and no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as last aforesaid; but nothing herein contained shall enure to prevent the said Judicial Committee from directing witnesses to be examined and re-examined upon such facts as to the said Judicial Committee shall seem fit.

Appeal from an order, &c., of the Court made on an appeal to it.
Costs of appeal.

109. An appeal shall lie from a decree, order, or decision of the High Court of Admiralty made or given on appeal from a local Court, in like cases and in like manner as appeals lie from the High Court of Admiralty in causes originally instituted therein.

110. Where in an appeal under this Act the appellant is unsuc-

cessful, he shall pay the costs of the Appeal, unless the Appellate Court shall otherwise direct.

111. The time for appealing from any decree or order of the Court of Admiralty in any cause instituted after the passing of this Act (under this Act or otherwise) shall be limited to two months from the date of the decree or order appealed from, and an appeal shall not be allowed unless the petition of appeal is lodged in the registry of the Court of Admiralty and the Court of Appeal within that time; subject to the provision, that it shall be lawful for the Court of Appeal to which such appeal shall be made to allow, under special circumstances, the appeal to be prosecuted notwithstanding that the petition of appeal has not been lodged within that time.

Limit of time for all appeals from Court of Admiralty.

PART VI.—STAMPS SUBSTITUTED INSTEAD OF FEES.

112. The Lord Chancellor, with the consent of the Commissioners of Her Majesty's Treasury, may by order from time to time increase, diminish, alter, or abolish all or any of the fees payable in relation to proceedings in the Court of Admiralty, and may substitute one or more fee or fees in lieu thereof.

Lord Chancellor may, with consent of the Treasury, vary, alter, or abolish fees.

113. From and after the commencement of this Act, no officer of the said Court of Admiralty shall be entitled to or take for his own use or benefit, directly or indirectly, any fee or emolument whatsoever, save the salary to which he shall be entitled by virtue of this Act.

From commencement of Act, Officers not to receive fees on their own account.

114. From and after the commencement of this Act, the fees payable in relation to proceedings in the Court of Admiralty and the local Courts aforesaid shall not be received in money, but shall be collected by means of stamps.

From commencement of Act fees to be collected by stamps.

115. The fees to be collected by means of stamps under this Act shall be deemed stamp duties, and shall be under the management of the Commissioners of Inland Revenue, and the money received for such stamps shall, under the direction of the Commissioners of Her Majesty's Treasury, be carried into and shall form part of the consolidated fund.

Such fees to be stamp duties.

116. The stamps to be used under this Act shall be impressed or adhesive, as the Commissioners of Her Majesty's Treasury shall from time to time direct.

Stamps to be impressed or adhesive, as the Treasury shall direct.

117. The Commissioners of Her Majesty's Treasury, with the concurrence of the judge of the Court of Admiralty, may from time to time make such rules as may seem fit for regulating the use of stamps under this Act, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of adhesive stamps.

The Treasury, with concurrence of judge, may make rules regulating the use of stamps and cancellation of

adhesive stamps.

No document to be received or used unless stamped.

118. No document which by any order as aforesaid ought to have had a stamp impressed thereon or affixed thereto shall be received or filed or be used in relation to any proceeding in the Court of Admiralty, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto in the manner directed by such order: Provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon or affixed thereto has through mistake or inadvertence been received or filed, or used without having such stamp impressed thereon or affixed thereto, the judge may, if he shall think fit, order that a stamp, not exceeding in value four times the amount of such original stamp, shall be impressed thereon or affixed thereto, and thereupon, when the proper stamp shall, in compliance with such order, have been impressed on such document or affixed thereto, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

Officers guilty of fraud or wilful neglect in relation to stamps liable to be dismissed.

119. If any officer of the Court of Admiralty or other person shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this Act, or to any fee or sum of money to be collected or which ought to be collected by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission in relation to any such stamp or fee as aforesaid, whereby any fee or sum of money which ought to be collected shall be lost or the payment thereof evaded, any such officer or person so offending may be dismissed from his office or employment by the judge of the said Court of Admiralty.

Compensation to the registrar of the Court of Delegates.

120. And whereas Joseph Hamilton, esquire, the present registrar of Appeals and Provocations Spiritual in Ireland, will suffer loss in his said office by the abolition of appeals from the Court of Admiralty to the High Court of Delegates in Ireland, and the said Joseph Hamilton has held his said office for upwards of forty-three years: There shall be paid to the said Joseph Hamilton by way of compensation such annuity as the commissioners of Her Majesty's Treasury may deem just and proper, not exceeding the average of the net profits of his said office from Admiralty Appeals on an average for the five years ending thirty-first December one thousand eight hundred and sixty-five, to commence from the day when this Act shall come into operation, and to continue during his life.

Compensation to proctors.

121. Whereas the number of persons entitled to practice as proctors of the said Court of Admiralty does not exceed six, and the fees or emoluments of the said proctors may be damaged by the abolition of the exclusive rights and privileges which they have hitherto enjoyed

as such proctors in the said Court: Be it enacted, That the commissioners of Her Majesty's Treasury, by examination on oath or otherwise, which oath they are hereby authorized to administer, may inquire into, and may, by the production of such evidence as they shall think fit to require, including the returns for the assessment of income tax made by such proctors before the passing of this Act, and the receipts for payment of such tax, ascertain and absolutely determine the net annual amount of the profits arising from the transaction of business by proctors on matters and causes in such Admiralty Court, on an average of five years immediately preceding the commencement of this Act, and shall award to each and every such proctor a sum of money or annual payment during the term of his natural life, not exceeding in value one half of the net profits derived by such proctor in respect of matters and causes in the said Court of Admiralty, upon the said average of five years immediately preceding the commencement of this Act: Provided, that if any such person shall be at any time appointed to any office under this Act, or any other office of profit of a like nature, or any other employment as an established civil servant of the State, he shall during his continuance in any such office or employment be entitled to receive such part only, if any, of the annual sum awarded to him under this clause as shall with the salary and profits of such office or employment make an annual sum equal to the annual sum so awarded to him: Provided also, that the portion of the business of the Queen's Proctor which he discharges for Her Majesty shall not be taken into account in estimating his compensation under this clause.

122. And whereas divers proctors practising in the said Court of Admiralty now are or may at the commencement of this Act be associated together in partnership: Be it therefore enacted, That in all such cases the commissioners of Her Majesty's Treasury shall inquire into and ascertain the terms or conditions of such partnerships, and shall absolutely determine and award compensation in respect thereof, as herein-before provided, to each of such partnerships, in like manner as if all the emoluments thereof had been derived by one individual, and shall apportion such compensation among the members of each such partnership, with or without benefit of survivorship, regard being had to the existing terms and conditions of the same.

Compensation
to proctors in
partnership.

123. Except as is herein-before expressly provided, the several retiring pensions and compensations granted by this Act shall be paid by the commissioners of Her Majesty's Treasury out of such funds as may be provided by Parliament for that purpose.

Retiring
pensions, &c.,
to be paid out
of monies
provided by
Parliament.

124. This Act shall apply to Ireland only.

Extent of Act.

G.

33 & 34 VICT., CAP. 90.—[9th August, 1870.]

An Act to regulate the conduct of Her Majesty's Subjects during the existence of hostilities between foreign states with which Her Majesty is at peace.

WHEREAS it is expedient to make provision for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title of Act.

1. This Act may be cited for all purposes as "The Foreign Enlistment Act, 1870."

Application of Act.

2. This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

Commencement of Act.

3. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place, in this Act referred to as the commencement of this Act.

Illegal Enlistment.

Penalty on enlistment in service of foreign state.

4. If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this Act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

5. If any person, without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

Penalty on leaving Her Majesty's dominions with intent to serve a foreign state.

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

6. If any person induces any other person to quit Her Majesty's dominions, or to embark on any ship within Her Majesty's dominions, under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state,—

Penalty on embarking persons under false representations as to service.

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

7. If the master or owner of any ship, without the license of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons; that is to say,

Penalty on taking illegally enlisted persons on board ship.

- (1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state:
- (2.) Any person, being a British subject, who, without the license of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:
- (3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue ; that is to say,

- (1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour : and,
- (2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace : and
- (3.) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

Illegal Shipbuilding and Illegal Expeditions.

Penalty on
illegal ship-
building and
illegal
expeditions.

8. If any person within Her Majesty's dominions, without the license of Her Majesty, does any of the following acts ; that is to say,—

- (1.) Builds or agrees to build, or causes to be built any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state : or
- (2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state : or
- (3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state : or
- (4.) Despatches, or causes or allows to be despatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state :

Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue :

- (1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour

- (2.) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to Her Majesty :

Provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following ; (that is to say,)

- (1.) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State :
- (2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered, or removed without the license of Her Majesty until the termination of such war as aforesaid.

9. Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state, or is delivered to or to the order of such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state.

Presumption as to evidence in case of illegal ship.

10. If any person within the dominions of Her Majesty, and without the license of Her Majesty,—

Penalty on aiding the warlike equipment of foreign ships.

By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state,—

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.

11. If any person within the limits of Her Majesty's dominions and without the license of Her Majesty,—

Penalty on fitting out naval or military expedition

Prepares or fits out any naval or military expedition to proceed

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ditions without against the dominions of any friendly state, the following consequences shall ensue :

- (1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.
- (2.) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

Punishment of accessories.

12. Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender.

Limitation of term of imprisonment.

13. The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years.

Illegal Prize.

Illegal prize brought into British ports restored.

14. If, during the continuance of any war in which Her Majesty may be neutral, any ship, goods, or merchandise captured as prize of war within the territorial jurisdiction of Her Majesty, in violation of the neutrality of this realm, or captured by any ship which may have been built, equipped, commissioned, or dispatched, or the force of which may have been augmented, contrary to the provisions of this Act, are brought within the limits of Her Majesty's dominions by the captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war so captured as aforesaid, it shall be lawful for the original owner of such prize, or his agent, or for any person authorised in that behalf by the Government of the foreign state to which such owner belongs, to make application to the Court of Admiralty for seizure and detention of such prize, and the Court shall, on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner, and subject to the same right of appeal, as in case of any order made in the exercise of the ordinary jurisdiction of such Court ; and in the meantime and until a final order has been made on such application, the Court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods, or merchandise, and (if the same be of perishable nature, or incurring risk of deterioration) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such Court in the exercise of its ordinary jurisdiction.

General Provision.

15. For the purposes of this Act, a license by Her Majesty shall be under the sign manual of Her Majesty, or be signified by Order in Council or by proclamation of Her Majesty.

License by Her Majesty how granted.

Legal Procedure.

16. Any offence against this Act shall, for all purposes of and incidental to the trial and punishment of any person guilty of any such offence, be deemed to have been committed either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

Jurisdiction in respect of offences by persons against Act.

17. Any offence against this Act may be described in any indictment or other document relating to such offence, in cases where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city, or place in which the trial is held.

Venue in respect of offences by persons.
24 & 25 Vict.
c. 97.

18. The following authorities, that is to say, in the United Kingdom any judge of a superior Court, in any other place within the jurisdiction of any British Court of justice, such Court, or, if there are more Courts than one, the Court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant," direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offence had been committed at such place.

Power to remove offenders for trial.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under any such warrant as aforesaid be deemed to be in the legal custody of the person or persons empowered to remove him.

19. All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this Act shall require the sanction of the Secretary of State

Jurisdiction in respect of forfeiture of ships for

offences against
Act.

or such chief executive authority as is in this Act mentioned, and shall be had in the Court of Admiralty, and not in any other Court; and the Court of Admiralty shall, in addition to any power given to the Court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

Regulations as
to proceedings
against the
offender and
against the
ship.

20. Where any offence against this Act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any Court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender

Officers
authorised to
seize offending
ships.

21. The following officers, that is to say,

- (1.) Any officer of customs in the United Kingdom, subject nevertheless to any special or general instructions from the Commissioners of Customs or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade;
- (2.) Any officer of customs or public officer in any British possession, subject nevertheless to any special or general instructions from the governor of such possession;
- (3.) Any commissioned officer on full pay in the military service of the Crown, subject nevertheless to any special or general instructions from his commanding officer;
- (4.) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from the Admiralty or his superior officer,

may seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as the "local authority;" but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such Court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

Powers of
officers
authorised to
seize ships.

22. Any officer authorised to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of customs, or any harbour-master or dock-master, or any officers having authority by law to make seizures of ships, and may put on board any ship so seized or detained any one

or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

23. If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has been either condemned or released by process of law, or in manner herein-after mentioned.

Special power of Secretary of State or chief executive authority to detain ship.

The owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the Court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the Court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the Court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State or chief executive authority.

The Court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the Court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the Court that the ship was not and is not being built, commissioned, or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act, or may release the ship without such security if the

Secretary of State or chief executive authority think fit so to release the same.

If the Court be of opinion that there was not reasonable and probable cause for the detention, and if no such cause appear in the course of the proceedings, the Court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the Court, and any amount so assessed shall be payable by the Commissioners of the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the Court, in a summary way, in cases where the ship is released by the order of the Secretary of State or the chief executive authority, before any application is made by the owner or his agent to the Court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the Court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

Special power
of local
authority to
detain ship.

24. Where it is represented to any local authority, as defined by this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the Secretary of State or chief executive authority.

Upon the receipt of such communication the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship

was built, commissioned, or equipped or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention upon application to the Court of Admiralty in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the Court for such release.

25. The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other place within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign state at war with a friendly state, and to search such ship.

Power of Secretary of State or executive authority to grant search warrant.

26. Any powers or jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty, and such powers and jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority, within their respective jurisdictions; that is to say,

Exercise of powers of Secretary of State or chief executive authority.

- (1.) In Ireland by the Lord Lieutenant or other the chief governor or governors of Ireland for the time being, or the chief secretary to the Lord Lieutenant :
- (2.) In Jersey by the Lieutenant Governor :
- (3.) In Guernsey, Alderney, and Sark, and the dependent islands by the Lieutenant Governor :
- (4.) In the Isle of Man by the Lieutenant Governor :
- (5.) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State or by any officer authorised in pursuance of this Act to issue such warrant in Ireland, the Channel Islands, or the Isle of Man shall be laid before Parliament.

27. An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a Court of Admiralty.

Appeal from Court of Admiralty.

28. Subject to the provisions of this Act providing for the award of damages in certain cases in respect of the seizure or detention of

Indemnity to officers.

a ship by the Court of Admiralty no damages shall be payable, and no officer or local authority shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

Indemnity to Secretary of State or chief executive authority.

29. The Secretary of State shall not, nor shall the chief executive authority, be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

Interpretation Clause.

Interpretation of Terms.

30. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them ; that is to say,

“ Foreign State :”

“ Foreign state ” includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people :

“ Military service :”

“ Military service ” shall include military telegraphy and any other employment whatever, in or in connexion with any military operation :

“ Naval service :”

“ Naval service ” shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store ship, privateer or ship under letters of marque ; and as respects a ship, include any user of a ship as a transport, store ship, privateer or ship under letters of marque :

“ United Kingdom :”

“ United Kingdom ” includes the Isle of Man, the Channel Islands, and other adjacent islands :

“ British possession :”

“ British possession ” means any territory, colony, or place being part of Her Majesty’s dominions, and not part of the United Kingdom as defined by this Act :

“ The Secretary of State :”

“ The Secretary of State ” shall mean any one of Her Majesty’s Principal Secretaries of State :

“ Governor :”

“ The Governor ” shall as respects India mean the Governor General or the Governor of any presidency, and where a British possession consists of several constituent colonies, mean the Governor General of the whole possession or the Governor of any of the constituent colonies, and as respects any other British possession it shall mean the officer for the time being

administering the government of such possession ; also any person acting for or in the capacity of a governor shall be included under the term "Governor" :

- " Court of Admiralty " shall mean the High Court of Admiralty of England or Ireland, the Court of Session of Scotland, or any Vice-Admiralty Court within Her Majesty's dominions : " Court of Admiralty : "
- " Ship " shall include any description of boat, vessel, floating battery, or floating craft ; also any description of boat, vessel, or other craft or battery, made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water : " Ship : "
- " Building " in relation to a ship shall include the doing any act towards or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly : " Building : "
- " Equipping " in relation to a ship shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service, and all words relating to equipping shall be construed accordingly : " Equipping : "
- " Ship and equipment " shall include a ship and everything in or belonging to a ship : " Ship and equipment : "
- " Master " shall include any person having the charge or command of a ship. " Master. "

Repeal of Acts, and Saving Clauses.

31. From and after the commencement of this Act, an Act passed in the fifty-ninth year of the reign of His late Majesty King George the Third, chapter sixty-nine, intituled " An Act to prevent the " enlisting or engagement of His Majesty's subjects to serve in " foreign service, and the fitting out or equipping, in His Majesty's " dominions, vessels for warlike purposes, without His Majesty's " license, " shall be repealed : Provided that such repeal shall not affect any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation, nor the institution of any investigation or legal proceeding, or any other remedy for enforcing any such penalty, forfeiture, or punishment as aforesaid.

Repeal of
Foreign Enlist-
ment Act.
59 G. 3, c. 69.

32. Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign state, or give to any British court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign state any jurisdiction which it would not have had if this Act had not passed.

Saving as to
commissioned
foreign ships.

33. Nothing in this Act contained shall extend or be construed

Penalties not

to extend to persons entering into military service in Asia. 59 G. 3, c. 69, s. 12.

to extend, to subject to any penalty any person who enters into the military service of any prince, state, or potentate in Asia, with such leave or licence as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes, states, or potentates in Asia.

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12 & 13 VICT. CAP. 96.

An Act to provide for the Prosecution and Trial in Her Majesty's Colonies of Offences committed within the Jurisdiction of the Admiralty.
[1st August 1849.]

10 & 11 W. 3, c. 7. WHEREAS by an Act passed in the eleventh year of the reign of King William the Third, intituled "An Act for the more effectual Suppression of Piracy," it is enacted, that all piracies, felonies, and robberies committed on the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, may be examined, inquired of, tried, heard, and determined, and adjudged, in any place at sea or upon the land in any of His Majesty's islands, plantations, colonies, dominions, forts, or factories, to be appointed for that purpose by the King's Commission, in the manner therein directed, and according to the Civil Law and the method and rules of the Admiralty: And whereas by an Act passed in the forty-sixth year of the reign of King George the Third, intituled, "An Act for the speedy Trial of Offences committed in distant parts upon the sea," it is enacted, that all treasons, piracies, felonies, robberies, murders, conspiracies, and other offences of what nature or kind soever, committed upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, may be inquired of, tried, heard, determined, and adjudged, according to the common course of the laws of this realm used for offences committed upon the land within this realm, and not otherwise, in any of His Majesty's islands, plantations, colonies, dominions, forts, or factories, under and by virtue of the King's commission or commissions under the great seal of Great Britain, to be directed to commissioners in the manner and with the powers and authorities therein provided: And whereas it is expedient to make further and better provision for the apprehension, custody, and trial in Her Majesty's islands, plantations, colonies, dominions, forts, and factories of persons charged with the commission of such offences on the sea, or in any such haven, river, creek, or place as aforesaid: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual

46 G. 3, c. 54.

and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that if any person within any colony shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy, or other offence, of what nature or kind soever, committed upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, or if any person charged with the commission of any such offence upon the sea, or in any such haven, river, creek, or place, shall be brought for trial to any colony, then and in every such case, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in such colony shall have and exercise the same jurisdiction and authorities for inquiring of, trying, hearing, determining, and adjudging such offences, and they are hereby respectively authorised, empowered, and required to institute and carry on all such proceedings for the bringing of such person so charged as aforesaid to trial, and for and auxiliary to and consequent upon the trial of any such person for any such offence wherewith he may be charged as aforesaid, as by the law of such colony would and ought to have been had and exercised or instituted and carried on by them respectively if such offence had been committed, and such person had been charged with having committed the same, upon any waters situate within the limits of any such colony, and within the limits of the local jurisdiction of the Courts of criminal justice of such colony.

2. Provided always, and be it enacted, that if any person shall be convicted before any such Court of any such offence, such person so convicted shall be subject and liable to and shall suffer all such and the same pains, penalties, and forfeitures as by any law or laws now in force persons convicted of the same respectively would be subject and liable to in case such offence had been committed, and were inquired of, tried, heard, determined, and adjudged, in England, any law, statute, or usage to the contrary notwithstanding.

3. And be it enacted, that where any person shall die in any colony of any stroke, poisoning, or hurt, such person having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, or at any place out of such colony, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in such colony in the same manner in all respects as if such offence had been wholly committed in that colony; and that if any person in any colony shall be charged with any such offence as aforesaid in respect of the death of any person who, having been feloniously stricken, poisoned, or otherwise hurt, shall have died of

All persons charged in any colony with offences committed on the sea, may be dealt with in the same manner as if the offences had been committed on waters within the local jurisdiction of the courts of the colony.

Persons convicted of such offences shall suffer the like punishments as on conviction of like offences in England.

Provision for the trial of murder and manslaughter, where the death only happens in the colony or upon the sea.

such stroke, poisoning, or hurt upon the sea, or in any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, such offence shall be held for the purpose of this Act to have been wholly committed upon the sea.

Jurisdiction of
the Supreme
Courts of New
South Wales
and Van
Diemen's Land
preserved.
9 G. 4, c. 83.

4. Provided also, and be it enacted, that nothing in this Act contained shall in any way affect or abridge the jurisdiction of the Supreme Courts of New South Wales and Van Diemen's Land, as established by an Act passed in the ninth year of the reign of King George the Fourth, intituled "An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto."

Interpretation
of Terms.

5. And be it enacted, that for the purposes of this Act the word "Colony" shall mean any island, plantation, colony, dominion, fort, or factory of Her Majesty, except any island within the United Kingdom, and the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the Islands adjacent thereto respectively, and except also all such parts and places as are under the Government of the East India Company: and the word "Governor" shall mean the officer for the time being administering the government of any colony.

Act may be
amended, &c.

6. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this present Session of Parliament.

I.
REGULATIONS
FOR
PREVENTING COLLISIONS AT SEA,

APPENDED TO THE ORDER IN COUNCIL,

*Dated 9th January, 1863, which were issued in pursuance of the Merchant Shipping Act (Amendment Act), 1862, s. 25, and came into operation on the 1st June, 1863.**

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* For Order in Council, see Lushington's R. App. 72.

Preliminary.

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship ; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Lights.

Art. 2. The Lights mentioned in the following Articles, numbered 3, 4, 5, 6, 7, 8, and 9, and no others, shall be carried in all weathers, from sunset to sunrise.

Lights for
steam ships.

Art. 3. Seagoing steam ships when under way shall carry :

- (a.) At the foremast head, a bright white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass ; so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to 2 points abaft the beam on either side ; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles :
- (b.) On the starboard side, a green light, so constructed as to throw an uniform and unbroken light over an arc of the horizon of 10 points of the compass ; so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side ; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles :
- (c.) On the port side, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass ; so fixed as to throw the light from right ahead to two points abaft the beam on the port side ; and of such a character, as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles :
- (d.) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Lights for
steam tugs.

Art. 4. Steam ships when towing other ships, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry.

Lights for
sailing ships.

Art. 5. Sailing ships under weigh, or being towed, shall carry the same lights as steam ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

RÈGLES À SUIVRE

POUR

PRÉVENIR LES ABORDAGES EN MER.

Preliminaire.

Art. 1. Dans les règles qui suivent, tout navire à vapeur qui ne marche qu'à l'aide de ses voiles est considéré comme navire à voiles ; et tout navire dont la machine est en action, quelle que soit sa voilure, est considéré comme navire à vapeur.

Règles relatives aux feux et aux signaux en temps de brume.

Art. 2. Des feux mentionnés aux articles suivants doivent être portés, à l'exclusion de tous autres, par tous les temps, entre le coucher et le lever du soleil.

Art. 3. Les navires à vapeur, lorsqu'ils sont en marche, portent les feux ci-après :

- (a) *En tête du mât de misaine*, un feu blanc placé de manière à fournir un rayonnement uniforme et non interrompu dans tout le parcours d'un arc horizontal de 20 quarts du compas, qui se compte depuis l'avant jusqu'à 2 quarts en arrière du travers de chaque bord et d'une portée telle qu'il puisse être visible à 5 milles au moins de distance, par une nuit sombre, mais sans brume :
- (b) *A tribord*, un feu vert établi de façon à projeter une lumière uniforme et non interrompue sur un arc horizontal de 10 quarts du compas, qui est compris entre l'avant du navire, et 2 quarts sur l'arrière du travers à tribord, et d'une portée telle qu'il puisse être visible à 2 milles au moins de distance, par une nuit sombre, mais sans brume :
- (c) *A bâbord*, un feu rouge construit de façon à projeter une lumière uniforme et non interrompue sur un arc horizontal de 10 quarts du compas, qui est compris entre l'avant du navire, et 2 quarts sur l'arrière du travers à bâbord, et d'une portée telle qu'il puisse être visible à 2 milles au moins de distance, par une nuit sombre, mais sans brume :
- (d) Ces feux de côté sont pourvus, en dedans du bord, d'écrans dirigés de l'arrière à l'avant, et s'étendent à 0^m.90 en avant de la lumière, afin que le feu vert ne puisse pas être aperçu de bâbord avant, et le feu rouge de tribord avant.

Art. 4. Les navires à vapeur, quand ils remorquent, doivent, indépendamment de leurs feux de côté porter deux feux blancs verticaux en tête de mât, qui servent à les distinguer des autres navires à vapeur. Ces feux sont semblables au feu unique de tête de mât que portent les navires à vapeur ordinaires.

Art. 5. Les bâtiments à voiles, lorsqu'ils font route à la voile ou en remorque, portent les mêmes feux que les bâtiments à vapeur en marche, à l'exception du feu blanc du mât de misaine, dont ils ne doivent jamais faire usage.

Exceptional
lights for small
sailing vessels.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Lights for
ships at
anchor.

Art. 7. Ships, whether steam-ships or sailing-ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light, in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and at a distance of at least one mile.

Lights for
pilot vessels.

Art. 8. Sailing pilot-vessels shall not carry the lights required for other sailing-vessels, but shall carry a white light at the mast-head, visible all round the horizon,—and shall also exhibit a flare-up light every fifteen minutes.

Lights for
fishing vessels
and boats.

Art. 9. Open fishing-boats and other open boats shall not be required to carry the side lights required for other vessels; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

Rules concerning Fog Signals.

Fog signals.

Art. 10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes, viz. :—

- (a.) Steam ships under weigh shall use a steam whistle placed before the funnel, not less than eight feet from the deck :
- (b.) Sailing ships under weigh shall use a fog horn :
- (c.) Steam ships and sailing ships when not under weigh shall use a bell.

Art. 6. Lorsque des bâtiments à voiles sont d'assez faibles dimension pour que leurs feux verts et rouges ne puissent pas être fixés d'une manière permanente, ces feux sont néanmoins tenus allumés sur le pont à leurs bords respectifs, prêts à être montrés instantanément à tout navire dont on constaterait l'approche, et assez à temps pour prévenir l'abordage.

Ces fanaux portatifs pendant cette exhibition sont tenus autant en vue que possible, et présentés de telle sorte que le feu vert ne puisse être aperçu de bâbord avant, et le feu rouge de tribord avant.

Pour rendre ces prescriptions d'une application plus certaine et plus facile, les fanaux sont peints extérieurement de la couleur de feu qu'ils contiennent, et doivent être pourvus d'écrans convenables.

Art. 7. Les bâtiments, tant à voiles qu'à vapeur, mouillés sur une rade, dans un chenal ou sur une ligne fréquentée, portent, depuis le coucher jusqu'au lever du soleil, un feu blanc placé à une hauteur qui n'excède pas 6 mètres au-dessus du plat-bord et projetant une lumière uniforme et non interrompue tout autour de l'horizon à la distance d'au moins un mille.

Art. 8. Les bateaux-pilotes à voiles ne sont pas assujettis à porter les mêmes feux que ceux exigés pour les autres navires à voiles; mais ils doivent avoir en tête de mât un feu blanc visible de tous les points de l'horizon, et de plus montrer un feu de quart d'heure en quart d'heure.

Art. 9. Les bateaux de pêche non pontés et tous les autres bateaux également non pontés ne sont pas tenus de porter les feux de côté exigés pour les autres navires; mais ils doivent, s'ils ne sont pas pourvus de semblables feux, se servir d'un fanal muni sur l'un de ses côtés d'une glissoire verte, et sur l'autre d'une glissoire rouge, de façon qu'à l'approche d'un navire ils puissent montrer ce fanal en temps opportun pour prévenir l'abordage, en ayant soin que le feu vert ne puisse être aperçu de bâbord, et le feu rouge de tribord.

Les navires de pêche et les bateaux non pontés qui sont à l'ancre, ou qui ayant leurs filets dehors sont stationnaires, doivent montrer un feu blanc.

Ces mêmes navires et bateaux peuvent, en outre, faire usage d'un feu visible à de courts intervalles, s'ils le jugent convenable.

Signaux en temps de brume.

Art. 10. En temps de brume, de jour comme de nuit, les navires font entendre les signaux suivants toutes les cinq minutes au moins, savoir :

- (a.) Les navires à vapeur en marche, le son du sifflet à vapeur qui est placé en avant de la cheminée à une hauteur de 2^m.40 au-dessus du pont des gaillards :
- (b.) Les bâtiments à voiles, lorsqu'ils sont en marche, font usage d'un cornet :
- (c.) Les bâtiments à vapeur et à voiles, lorsqu'ils ne sont pas en marche, font usage d'une cloche.

Steering and Sailing Rules.

Two sailing ships meeting.

Art. 11. If two sailing ships are meeting end on or nearly end on so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.*

Two sailing ships crossing.

Art. 12. When two sailing ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side; except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

Two ships under steam meeting.

Art. 13. If two ships under steam are meeting end on or nearly end on so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Two ships under steam crossing.

Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Sailing ship and ship under steam.

Art. 15. If two ships, one of which is a sailing ship, and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

Ships under steam to slacken speed.

Art. 16. Every steam ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam ship shall, when in a fog, go at a moderate speed.

Vessels overtaking other vessels.

Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Construction of Articles 12, 14, 15, and 17.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following article.

Proviso to save special cases.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

No ship under any circumstances, to neglect proper precautions.

Art. 20. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.†

* Articles 11 and 13 explained, *vide post*, N.

† The Diagrams to illustrate the use of the lights carried by vessels at sea, and the manner in which they indicate to the vessel which sees them, the position and description of the vessel that carries them, appended to these

Règles relatives à la route.

Art. 11. Si deux navires à voiles se rencontrent courant l'un sur l'autre, directement ou à-peu-près, et qu'il y ait risque d'abordage, tous deux viennent sur tribord, pour passer à bâbord l'un de l'autre.

Art. 12. Lorsque deux navires à voiles font des routes qui se croisent et les exposent à un abordage, s'ils ont des amures différentes, le navire qui a les amures à bâbord manœuvre de manière à ne pas gêner la route de celui qui a le vent de tribord ; toutefois, dans le cas où le bâtiment qui a les amures à bâbord est au plus près, tandis que l'autre a du largue, celui-ci doit manœuvrer de manière à ne pas gêner le bâtiment qui est au plus près. Mais, si l'un des deux est vent arrière ou s'ils ont le vent du même bord, le navire qui est vent arrière ou qui aperçoit l'autre sous le vent manœuvre pour ne pas gêner la route de ce dernier navire.

Art. 13. Si deux navires sous vapeur se rencontrent courant l'un sur l'autre, directement ou à-peu-près, et qu'il y ait risque d'abordage, tous deux viennent sur tribord, pour passer à bâbord l'un de l'autre.

Art. 14. Si deux navires sous vapeur font des routes qui se croisent et les exposent à s'aborder, celui qui voit l'autre par tribord manœuvre de manière à ne pas gêner la route de ce navire.

Art. 15. Si deux navires, l'un à voiles, l'autre sous vapeur, font des routes qui les exposent à s'aborder, le navire sous vapeur manœuvre de manière à ne pas gêner la route du navire à voiles.

Art. 16. Tout navire sous vapeur, qui approche un autre navire de manière qu'il y ait risque d'abordage, doit diminuer sa vitesse ou stopper et marcher en arrière, s'il est nécessaire. Tout navire sous vapeur doit, en temps de brume, avoir une vitesse modérée.

Art. 17. Tout navire qui en dépasse un autre gouverne de manière à ne pas gêner la route de ce navire.

Art. 18. Lorsque, par suite des règles qui précèdent, l'un des deux bâtiments doit manœuvrer de manière à ne pas gêner l'autre, celui-ci doit néanmoins subordonner sa manœuvre aux règles énoncées à l'article suivant.

Art. 19. En se conformant aux règles qui précèdent, les navires doivent tenir compte de tous les dangers de la navigation. Ils auront égard aux circonstances particulières qui peuvent rendre nécessaire une dérogation à ces règles, afin de parer à un péril immédiat.

Art. 20. Rien dans les règles ci-dessus ne saurait affranchir un navire, quel qu'il soit, ses armateurs, son capitaine ou son équipage, des conséquences d'une omission de porter des feux ou signaux, d'un défaut de surveillance convenable, ou, enfin, d'une négligence quelconque des précautions commandées par la pratique ordinaire de la navigation ou par les circonstances particulières de la situation.

Regulations, are the same as the schedule to the "Act respecting the Navigation of Canadian Waters," in which these Regulations are incorporated. Post, App. M.

J.

AN ACT OF CONGRESS
OF THE
UNITED STATES OF AMERICA.

38TH CONGRESS, SESS. 1, CH. 69. (29th April, 1864.)

An Act fixing certain Rules and Regulations for preventing collisions on the water.

Rules, &c., for preventing collisions on the water.

Lights on vessels-of-war need not be exhibited, when, &c.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after September one, eighteen hundred and sixty-four, the following rules and regulations for preventing collisions on the water be adopted in the navy and the mercantile marine of the United States :
Provided, That the exhibition of any light on board of a vessel-of-war of the United States may be suspended whenever, in the opinion of the Secretary of the Navy, the commander-in-chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it.

Regulations.

REGULATIONS FOR PREVENTING COLLISIONS ON THE
WATER.

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Art. 1. Preliminary.

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- „ 11. Two sailing-ships meeting.
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- „ 15. Sailing-ship and ship under steam.
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- Art. 17. Vessels overtaking other vessels.
 „ 18. Construction of articles 12, 14, 15, and 17.
 „ 19. Proviso to save special cases.
 „ 20. No ship under any circumstances to neglect proper precautions.

PRELIMINARY.

Art. 1. In the following rules every steamship which is under sail, and not under steam, is to be considered a sailing-ship ; and every steamship which is under steam, whether under sail or not, is to be considered a ship under steam.

What to be considered sailing ships and what ships under steam.

RULES CONCERNING LIGHTS.

Rules for lights.

Lights.

Art. 2. The lights mentioned in the following articles, and no others, shall be carried in all weathers between sunset and sunrise.

Lights for Steamships.

Art. 3. All steam-vessels when under way shall carry—

- (a.) At the foremast head, a bright white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the ship, viz. : from right ahead to two points abaft the beam on either side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.
- (b.) On the starboard side, a green light, so constructed as to throw an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.
- (c.) On the port side, a red light, so constructed as to show an uniform unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.
- (d.) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.
- Lights for steamships ;

Lights for Steam-tugs.

Art. 4. Steamships, when towing other ships, shall carry two for steam tugs.

bright white masthead lights vertically, in addition to their side lights, so as to distinguish them from other steamships. Each of these masthead lights shall be of the same construction and character as the masthead lights which other steamships are required to carry.

Lights for Sailing-ships.

for sailing
ships.

Art. 5. Sailing-ships under way or being towed shall carry the same lights as steamships under way, with the exception of the white masthead lights, which they shall never carry.

Exceptional Lights for small Sailing-vessels.

Exceptional
lights for small
sailing vessels.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, they shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Lights for Ships at Anchor.

Lights for ships
at anchor ;

Art. 7. Ships, whether steamships or sailing-ships, when at anchor in roadsteads or fairways, shall, between sunset and sunrise, exhibit where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all around the horizon, and at a distance of at least one mile.

Lights for Pilot-vessels.

for pilot ves-
sels.

Art. 8. Sailing pilot-vessels shall not carry the lights required for other sailing-vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light every fifteen minutes.

Lights for Fishing-vessels and Boats.

Lights for fish-
ing vessels and
boats.

Art. 9. Open fishing-boats and other open boats shall not be required to carry side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side, and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on

the port side, nor the red light on the starboard side. Fishing-vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light. Fishing-vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

RULES GOVERNING FOG-SIGNALS.

Fog-signals.

Art. 10. Whenever there is a fog, whether by day or night, the fog-signals described below shall be carried and used, and shall be sounded at least every five minutes, viz. :--

Rules for fog-signals.

- (a.) Steamships under way shall use a steam-whistle placed before the funnel, not less than eight feet from the deck.
- (b.) Sailing-ships under way shall use a fog-horn.
- (c.) Steamships and sailing-ships when not under way shall use a bell.

STEERING AND SAILING RULES.

Two Sailing-ships Meeting.

Steering and sailing rules.

Art. 11. If two sailing-ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Two sailing ships meeting ;

Two Sailing-ships Crossing.

Art. 12. When two sailing-ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close-hauled, and the other ship free, in which case the latter ship shall keep out of the way. But if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

Two sailing ships crossing.

Two Ships under Steam Meeting.

Art. 13. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Two ships under steam meeting ;

Two Ships under Steam Crossing.

Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Two ships under steam crossing.

Sailing-ship and Ship under Steam.

Sailing ship and ship under steam. Art. 15. If two ships, one of which is a sailing-ship and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing-ship.

Ships under Steam to slacken Speed.

Ships under steam to slacken speed. Art. 16. Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steamship shall, when in a fog, go at a moderate speed.

Vessels overtaking other Vessels.

Vessels overtaking other vessels. Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Construction of Articles 12, 14, 15, and 17.

Construction of Articles 12, 14, 15, and 17. Art. 18. Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article:—

Proviso to save Special Cases.

Special cases. Art. 19. In obeying and construing these rules due regard must be had to all dangers of navigation, and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

No Ship under any circumstances to neglect proper Precautions.

Proper precautions to be always observed. Art. 20. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

APPROVED, April 29, 1864.

K.

Order in Council extending Sailing Regulations to ships of the United States when navigating the inland waters of North America, whether within British Jurisdiction or not.

The extending of the foregoing regulations to other countries will be found in the Orders in Council referred to in Appendix to Lushington's Admiralty Reports, 72–8, and in Appendix to Browning and Lushington's Reports, p. 482. See also post, N.

The Order in Council, dated 30th November, 1864, after reciting "The Merchant Shipping Act Amendment Act, 1862," and Orders in Council, 9th January, 1863, and 27th August, 1864, proceeds as follows :—

"And whereas the said Government of the United States of America have expressed a desire that the said Regulations should be made to apply to ships navigating the inland waters of North America, and that they should apply to ships of the United States navigating such waters when beyond the limits of British jurisdiction :

"And whereas by an Act passed by the Legislative Council and Assembly of Canada, assented to on the 30th of June, 1864, and entitled 'An Act to amend the law respecting the navigation of Canadian waters,' after reciting that it would tend to the greater security of life and property in vessels navigating Canadian waters, that the same rules of navigation and the same precautions for avoiding collisions and other accidents as were then adopted in the United Kingdom, and in other countries, should also be adopted in Canada, it was enacted that on and after the first day of September, 1864, the rules contained therein with respect to lights, fog signals, steaming and sailing, should apply to all the rivers, lakes, and other navigable waters whatsoever within the province of Canada or within the jurisdiction of the Legislature thereof :

"And whereas the said rules so referred to are the same as the regulations appended to the said Order in Council, bearing date the 9th January, 1863, except that they are not entitled Regulations for preventing collisions at sea ; and whereas the same are also appended to this order :

"Now, therefore, Her Majesty, by virtue of the power vested in her by the said 'Merchant Shipping Act Amendment Act, 1862,' and by and with the advice of her Privy Council, is pleased to direct that the said regulations appended to this order, shall apply to ships belonging to the United States of America when navigating the inland waters of North America whether within British jurisdiction or not." *

* **MEM.**—By the Act of Dominion Parliament, post, M, the above-mentioned Act of the Provincial Legislature of Canada is repealed, and by re-enactment these regulations are extended to and prevail throughout all the waters of the Dominion.

L.

27 & 28 VICT. CAP. 14.

*An Act respecting investigation into Shipwrecks. Legislature of Canada.
[30th June, 1864.]*

Preamble.

WHEREAS it is expedient to make provision for ensuring a more efficient system of investigation into cases of shipwreck occurring within the limits of the Province of Canada, either in the Gulf of Saint Lawrence, or in the River St. Lawrence below the harbour of Montreal : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Governor in Council to appoint a Court of inquiry.

1. It shall be lawful for the Governor in Council, upon any occasion which to him may seem fit and expedient, to nominate and appoint any competent person or persons to be a court or tribunal duly authorized to make enquiry into the causes of shipwrecks, as mentioned in the preamble to this Act, and to make report thereon to the Governor in Council.

Powers of such Court ; evidence.

2. Such court or tribunal shall have the power of summoning before them any persons, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things as such court or tribunal may deem requisite to the full investigation of the matters into which they are appointed to examine, and such court or tribunal shall have the same power to enforce the attendance of such witnesses and to compel them to give evidence, as is vested in any Court of Law in civil cases ; and any wilfully false statement made by any such witness on oath or solemn affirmation, shall be a misdemeanor punishable in the same manner as wilful and corrupt perjury ; but no such witness shall be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution.

Enforcing attendance.

Perjury.

Proviso.

Sect. 242 of Imp. Act, 17 & 18 Vict. c. 104 recited.

3. And whereas it is enacted by the two hundred and forty-second section of the Act of the Imperial Parliament, passed in the session thereof held in the seventeenth and eighteenth years of Her Majesty's reign, chapter one hundred and four, intituled "An Act to Amend and Consolidate the Acts relating to Merchant Shipping," that the Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate of the Merchant Service, in certain cases, one of which cases, set forth in sub-section five of the said section, is as follows :—"If upon any investigation made by any court or tribunal authorized or hereafter to be authorized by the legislative authority in any British possession, to make inquiry into charges of incompetency or misconduct on the part of

masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and such report is confirmed by the governor or person administering the government of such possession ;” And whereas it is further in effect enacted by the twenty-third section of the Act of the Imperial Parliament, passed in the session thereof held in the twenty-fifth and twenty-sixth years of Her Majesty’s reign, chapter sixty-three, that the power of cancelling or suspending the certificate of a master or mate conferred by the above cited two hundred and forty-second section on the Board of Trade, shall in future vest in and be exercised by the court or tribunal by which the case is investigated or tried ; Be it hereby further enacted, that such court or tribunal authorised to be appointed by this Act, shall be held to be in all respects a court or tribunal under the hereinbefore cited sub-section of the aforesaid Imperial Act.

Sect. 23 of
Imp. Act, 25 &
26 Vict. c. 63
recited.

Power to cancel
certificate of
master or mate.

Such Court to
be a Court
under the said
Imp. Act.

4. Every member of such court or tribunal so appointed as aforesaid, before entering upon his duties as such, shall take and subscribe an oath before one of Her Majesty’s justices of the peace, well, faithfully and impartially, to execute the duties assigned to him by this Act.

Members to
take oath of
office.

M.

31 VICT. CAP. 58.

An Act respecting the Navigation of Canadian Waters. Dominion of Canada. [22nd May, 1868.]

WHEREAS the following rules of navigation and regulations for preventing collisions between vessels, being those in use in the United Kingdom and other countries, were adopted in the late Province of Canada in the year one thousand eight hundred and sixty-four, and have since continued and do still continue in force there under the Act of the Parliament of the said late Province hereinafter mentioned ; and whereas it is expedient and highly desirable that the same rules and regulations should be extended to and prevail throughout all the waters of the Dominion of Canada, and that for that purpose the said Act should be repealed and re-enacted : therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

Preamble.

1. This Act shall come into force on the first day of September next after its passing ; and on and after the said day, the Act of the

Commence-
ment of Act.

Act of Canada,
27 & 28 Vict.
c. 13; and Act
of New Brun-
swick 21 Vict.
c. 13 repealed.
Exception.

And all other
laws inconsis-
tent with this
Act.

Legislature of the late Province of Canada, passed in the session thereof held in the twenty-seventh and twenty-eighth years of Her Majesty's reign, chapter thirteen, intituled "An Act to Amend the Law respecting the Navigation of Canadian Waters," and the Act of the Legislature of the Province of New Brunswick, passed in the session held in the twenty-first year of Her Majesty's reign, chapter thirteen, intituled "An Act to compel vessels navigating the Bay of Fundy to carry Lights," shall be repealed, except only as regards offences committed or liabilities incurred under either of the said Acts before the said day, with respect to which, and to all proceedings relating to which, the said Act shall remain in force; and every enactment or provision in any other Act or law in force in any part of Canada before the coming into force of this Act, inconsistent with this Act, or making any provision for any matter provided for by this Act other than such as is hereby made shall also be repealed on and after the said day.

REGULATIONS FOR PREVENTING COLLISIONS.

Certain rules to
apply after 1st
Sept. 1868.

2. And with respect to lights, fog signals, steering and sailing, and rafts, the following rules shall, on and after the day last aforesaid, apply to all the rivers, lakes, and other navigable waters whatsoever within this Dominion, or within the jurisdiction of the Parliament thereof; that is to say :

Preliminary.

Construction of
rules.

Art. 1. In the following rules every steamship which is under sail and not under steam is to be considered a sailing ship; and every steamship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

What lights
shall be car-
ried.

By steamships
under weigh;
At foremast
head.

Art. 2. The lights mentioned in the following articles, numbered three, four, five, six, seven, eight, and nine, and no others, shall be carried in all weathers, from sunset to sunrise.

Art. 3. Steamships when under weigh shall carry :

(a.) At the foremast head, a bright white light, so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass; so fixed as to throw the light ten points on each side of the ship, viz., from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles :

On the star-
board side.

(b.) On the starboard side, a green light so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass; so fixed as to throw the light

from right ahead to two points abaft the beam on the starboard side ; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles :

- (c.) On the port side, a red light so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass ; so fixed as to throw the light from right ahead to two points abaft the beam on the port side ; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles : On port side.
- (d.) The said green and red side lights shall be fitted with in-board screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow. How fitted.

Art. 4. Steamships when towing other ships or rafts, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steamships ; each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steamships are required to carry. By steamships towing.

Art. 5. Sailing ships under weigh or being towed, shall carry the same lights as steamships under weigh, with the exception of the white mast-head lights, which they shall never carry. By sailing ships in motion.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides, in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side. By small vessels in bad weather.

- (a.) To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens. Lanterns to be painted outside.

Art. 7. Ships, whether steamships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light, in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform and unbroken light visible all round the horizon, and at a distance of at least one mile. By ships at anchor.

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head, visible all round the horizon,—and shall also exhibit a flare-up light every fifteen minutes. By pilot vessels.

Art. 9. Open fishing boats and other open boats shall not be By open fishing

- and other open boats. required to carry the side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.
- When at anchor. (a.) Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.
- Flare-uplights. (b.) Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

Rules concerning Fog Signals.

- Fog signals. Art. 10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes, viz. :—
- (a.) Steamships under weigh shall use a steam whistle placed before the funnel, not less than eight feet from the deck.
 - (b.) Sailing ships under weigh shall use a fog horn.
 - (c.) Steamships and sailing ships, when not under weigh, shall use a bell.

Steering and Sailing Rules.

- Sailing ships meeting. Art. 11. If two sailing ships are meeting end on or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.
- Sailing ships crossing. Art. 12. When two sailing ships are crossing so as to involve risk of collision, then if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side; except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.
- Steamships meeting. Art. 13. If two ships under steam are meeting end on or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.
- Steamships crossing. Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.
- Sailing and steamships. Art. 15. If two ships, one of which is a sailing ship, and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.

- Art. 16. Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steamship shall, when in a fog, go at a moderate speed.* Steamship nearing another vessel.
- Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel. Vessel overtaking another.
- Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following article. Ship keeping out of the way.
- Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.† Regard to dangers of navigation.
- Art. 20. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. Rules not to excuse neglect.

Rafts and Harbour of Sorel.

- Art. 21. Rafts while drifting or at anchor on any navigable water shall have a bright fire kept burning thereon from sunset to sunrise. Whenever any raft is going in the same direction as another which is ahead, the one shall not be so navigated as to come within twenty yards of the other; and every vessel meeting or overtaking a raft shall keep out of the way thereof. Rules for rafts.
- (a.) Rafts shall be so navigated and anchored as not to cause any unnecessary impediment or obstruction to vessels navigating the same waters.
- Art. 22. Unless it is otherwise ordered by the Trinity House of Montreal, ships and vessels entering or leaving the Harbour of Sorel shall take the port side, anything in the preceding articles to the contrary notwithstanding. Harbour of Sorel.
- Art. 23. The rules of navigation contained in articles twenty-one and twenty-two shall be subject to the provisions contained in articles nineteen and twenty. Articles 21 and 22 to apply.

Interpretation, Penalties, &c.

3. In this Act the word "vessel" includes every description of vessel used in navigation,—the word "ship" includes every descrip- Interpretation.

* Only applies when there is a continuous approaching of two steamships. *The Jesmond* and *The Earl of Elgin*, 8 Moore's P. C. R. 179.

† See *The Moderation*, 1 Moore's P. C. R. 534 (New Series); *The David Cannon*, 9th March, 1865.

tion of vessel not propelled by oars,—the expression “steamship” includes every vessel propelled wholly or in part by steam or by any machinery or motive power other than sails or oars,—and the expression “ordinary practice of seamen,” as applied to any case, includes the ordinary practice of skilful and careful persons engaged in navigating the waters of this Dominion in like cases,—and the word “owner” includes the lessee or charterer of any vessel having the control of the navigation thereof.

Local rules and by-laws.

4. No Trinity House rule or by-law, or other local rule or by-law, inconsistent with this Act, shall be of any force or effect ; but so far as it is not inconsistent with this Act, any such rule or by-law made by any Trinity House or other competent local authority, shall be of full force and effect within the locality to which it applies.

Rules prescribed by this Act to be obeyed.

5. All owners, masters, and persons in charge of any ship, vessel, or raft, shall obey the rules prescribed by this Act, and shall not carry and exhibit any other lights nor use any other fog signals than such as are required by the said rules ; and in case of wilful default, such master or person in charge, or such owner, if it appears that he was in fault, shall, for each occasion in which any of the said rules is infringed, incur a penalty not exceeding two hundred dollars nor less than twenty dollars.

Collisions from non-observance of rules.

6. If in any case of collision it appears to the Court before which the case is tried, that such collision was occasioned by the non-observance of any of the rules prescribed by this Act, the vessel by which such rules have been infringed shall be deemed to be in fault ; and the owner of such vessel shall not be entitled to recover any recompense whatever for any damage sustained by such vessel in such collision, unless it can be shown to the satisfaction of the Court that the circumstances of the case rendered a departure from the said rules necessary.

As to damage by non-observance of rules.

7. In case any damage to person or property arises from the non-observance by any vessel or raft of any of the rules prescribed by this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of such raft, or of the deck of such vessel at the time, unless the contrary be proved, or it be shown to the satisfaction of the Court that the circumstances of the case rendered a departure from the said rules necessary ; and the owner of the vessel or raft, in all civil proceedings, and the master or person in charge as aforesaid, or the owner if it appears that he was in fault, in all proceedings, civil or criminal, shall be subject to the legal consequences of such default.

Recovery of penalties.

8. Except as hereinbefore provided, all penalties incurred under this Act may be recovered in the name of Her Majesty, by any Inspector of Steamboats, or by any party aggrieved by any act, neglect or wilful omission by which the penalty is incurred, before any two Justices of the Peace on the evidence of one credible witness ; and

in default of payment of such penalty, such Justices may commit the offender to gaol for any period not exceeding three months; and except as hereinafter provided, all penalties recovered under this Act shall be paid over to the Receiver General, and shall be by him placed at the credit of, and shall form part of "The Steamboat Inspection Fund;" except always, that all penalties incurred for any offence against this Act, shall, if such offence be committed within the jurisdiction of the Trinity House of Quebec, or of the Trinity House of Montreal, be sued for, recovered, enforced and applied in like manner as penalties imposed for contravention of the by-laws of the Trinity House within whose jurisdiction the offence is committed.

Exception.

9. Every inspector of steamboats shall, whenever he visits and inspects any steamboat, examine whether such steamboat is properly provided with lights, and with the means of making fog signals in pursuance of the rules prescribed by this Act, and shall for that purpose, have all the powers vested in him by the Act of this Session *respecting the inspection of steamboats, and for the greater safety of passengers by them*, for obtaining information as to the observance of the requirements of the said Act, and shall refuse to grant any certificate with respect to any steamboat which he finds to be not so provided, and shall report such steamboat as unsafe to the Governor in Council, who shall on such report have all the powers mentioned in section twenty-nine of the said Act; and any Order in Council made on such report shall have the effect and be enforced in the manner provided by the said section.

Inspector of steamboats to see that steam ships have proper lights, &c.

10. Whenever foreign ships are within Canadian waters the rules for preventing collision prescribed by this Act, and all provisions of this Act relating to the said rules, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any Court of Justice in Canada concerning matters happening within Canadian waters, foreign ships shall, so far as regards such rules and provisions, be treated as if they were British or Canadian ships.

Foreign ships in Canadian waters.

Duty of Masters, Liability of Owners as to Collisions.

11. In every case of collision between two ships, it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew and passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by such collision; in case he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect or default.

Obligation of masters of vessels to assist in case of collision.

Penalty in default.

12. The owners of any ship, whether Canadian, British or foreign,

Liability of

owners limited
in case of col-
lision without
their fault.

shall not, in cases where all or any of the following events occur without their actual fault or privity, that is to say :

- (1.) Where any loss of life or personal injury is caused to any person being carried in such ship ;
- (2.) Where any damage or loss is caused to any goods, merchandize, or other things whatsoever on board any such ship ;
- (3.) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person in any other ship or boat ;
- (4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to any goods, merchandize or other things whatsoever on board any other ship or boat ;

Extreme
amount re-
coverable.

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandize or other things, nor in respect of loss or damage to ships, goods, merchandize or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding thirty-eight dollars and ninety-two cents for each ton of the ship's tonnage, such tonnage to be the registered tonnage in the case of sailing ships ; and in the case of steamships the gross tonnage without deduction on account of engine room :

Tonnage, how
calculated in
such case.

- (a.) In the case of any British or Canadian ship, such tonnage shall be the registered or gross tonnage, according to the British or Canadian law, and in the case of a foreign ship which has been or can be measured according to British or Canadian law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship ;

The same.
Foreign ships.

- (b.) In the case of any foreign ship which has not been and cannot be measured according to British or Canadian law, the Secretary of the Minister of Marine and Fisheries shall, on receiving from or by direction of the Court hearing the case, such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to Canadian law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship.

As to insur-
ances in such
cases.

13. Insurances effected against any or all of the events enumerated in the section last preceding, and occurring without such actual fault or privity as therein mentioned, shall not be invalid by reason of the nature of the risk.

Collisions

14. No owner or master of any ship shall be answerable to any

person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any place where the employment of such pilot is compulsory by law. through fault of pilots.

SCHEDULE TO REPEALED ACT.

15. The schedule annexed to the Act of the Legislature of the late Province of Canada hereby repealed illustrates the use of the lights to be carried by vessels under the provisions of this Act, and shall be printed at the end of this Act by the Queen's printer in the official copy of the statutes of the present Session. Schedule to repealed Canadian Act to be printed with this.

SCHEDULE.

The following Diagrams are intended to illustrate the use of the Lights carried by vessels under the foregoing Act, and the manner in which they indicate to the vessel which sees them the position and description of the vessel which carries them.

FIRST.—When both red and green lights are seen :—

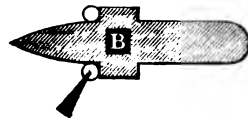
A sees a red and green light ahead ;— A knows that a vessel is approaching her on a course directly opposite to her own, as B ;



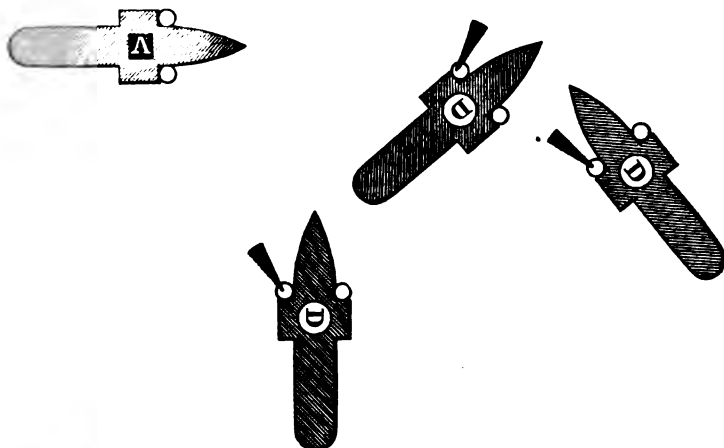
If A sees a white mast-head light above the other two, she knows that B is a steam-vessel.

SECOND.—When the red, and not the green light, is seen :—

A sees a red light ahead or on the bow ;—A knows that either, 1, a vessel is approaching her on her port bow, as B ;



or, 2, a vessel is crossing in some direction to port, as D D D.

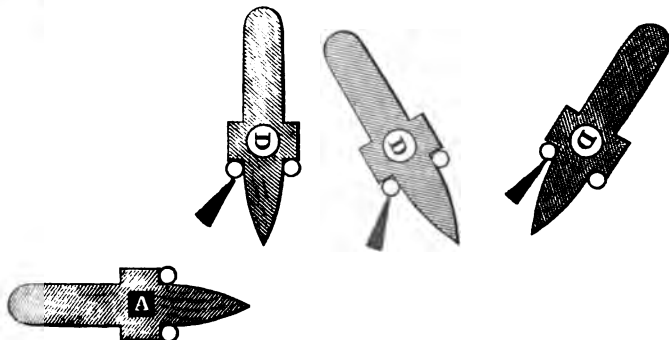


If A sees a white mast-head light above the red light, A knows that the vessel is a steam vessel, and is either approaching her in the same direction, as B, or is crossing to port in some direction, as D D D ;

THIRD.—When the green, and not the red light, is seen :—
A sees a green light ahead or on the bow ;—A knows that either,
1, a vessel is approaching her on her starboard bow, as B ;



or, 2, a vessel is crossing in some direction to starboard, as D D D.



If A sees a white mast-head light above the green light, A knows that the vessel is a steam-vessel, and is either approaching her in the same direction as B, or is crossing to starboard in some direction, as D D D.

N.

REGULATIONS

FOR

PREVENTING COLLISIONS AT SEA.

Order in Council respecting the application of Articles 11 and 13 of the Regulations as to two ships meeting each other end on or nearly end on.

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT,
the 30th day of July 1868.

PRESENT :

The QUEEN's most Excellent Majesty in Council.

WHEREAS by "The Merchant Shipping Act Amendment Act, 1862," it was enacted, that on and after the first day of June, one thousand eight hundred and sixty-three, or such later day as might be fixed for the purpose by Order in Council, the regulations contained in the table, marked C. in the schedule to the said Act should come into operation and be of the same force as if they were enacted in the body of the said Act ; but that Her Majesty might from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council annul or modify any of the said regulations, or make new regulations in addition thereto, or in substitution therefor, and that any alterations in or additions to such regulations made in manner aforesaid should be of the same force as the regulations in the said schedule :

And whereas by the same Act it was further provided that whenever it should be made to appear to Her Majesty that the Government of any foreign country is willing that the regulations for preventing collision contained in table C. in the schedule to the said Act, or such other regulations for preventing collision as are for the time being in force under the said Act, should apply to the ships of such country when beyond the limits of British jurisdiction, Her Majesty might by Order in Council direct that such regulations shall apply to the ships of the said foreign country whether within British jurisdiction or not ; and it was further provided by the said Act that whenever an Order in Council had been issued applying any regula-

tion made by or in pursuance of the said Act to the ships of any foreign country, such ships should in all cases arising in any British court be deemed to be subject to such regulation, and should for the purpose of such regulation be treated as if they were British ships :

And whereas by an Order in Council made in pursuance of the said recited Act, and dated the ninth day of January one thousand eight hundred and sixty-three, Her Majesty was pleased to direct :

First, that the regulations contained in the schedule to the said Act should be modified by the substitution for such regulations of certain regulations appended to the said Order ;

Secondly, that the said regulations appended to the said Order should on and after the first day of June one thousand eight hundred and sixty-three, apply to French ships, whether within British jurisdiction or not :

And whereas by several Orders in Council subsequently made Her Majesty has been pleased to direct that the regulations appended to the said Order of the ninth of January one thousand eight hundred and sixty-three shall apply to ships of the following countries, whether within British jurisdiction or not ; that is to say,

Austria.	Morocco.
Argentine Republic.	Netherlands.
Belgium.	Norway.
Brazil.	Oldenburg.
Bremen.	Peru.
Chili.	Portugal.
Denmark Proper.	Prussia.
Equator (Republic of the).	Roman States.
France.	Russia.
Great Britain.	Schleswig.
Greece.	Spain.
Hamburg.	Sweden.
Hanover.	Turkey.
Hawaiian Islands.	United States, Seagoing
Hayti.	ships.
Italy.	United States, Inland
Lubeck.	waters.
Mecklenburg-Schwerin.	Uruguay.

And whereas Articles 11 and 13 of the said regulations appended to the said recited Order of the ninth of January one thousand eight hundred and sixty-three, are as follows ; that is to say,

Article 11. " If two sailing ships are meeting end on or nearly end on, so as to involve risk of collision, the helms of both shall be put " to port, so that each may pass on the port side of the other."

Article 13. " If two ships under steam are meeting end on or

“nearly end on, so as to involve risk of collision, the helms of both “shall be put to port, so that each may pass on the port side of the “other.”

And whereas there has been doubt or misapprehension concerning the effect of the said two articles :

And whereas the Admiralty and the Board of Trade have jointly recommended to Her Majesty to make the following additions to the said regulations for the purpose of explaining the said recited articles, and of removing the said doubt and misapprehension :

Now, therefore, Her Majesty, by virtue of the powers vested in Her by the said recited Act, and by and with the advice of Her Privy Council, is pleased to make the following additions to the said regulations by way of explanation of the said two recited articles ; that is to say,

The said two articles, numbered 11 and 13 respectively, only apply to cases where ships are meeting end on or nearly end on *in such a manner as to involve risk of collision*. They consequently do not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases in which the said two articles apply are when each of the two ships is end on or nearly end on to the other ; in other words, to cases in which *by day* each ship sees the masts of the other in a line or nearly in a line with her own ; and *by night* to cases in which each ship is in such a position as to see both the side *lights* of the other.

The said two articles do not apply *by day* to cases in which a ship sees another *ahead* crossing her own course ; or *by night* to cases where the red light of one ship is opposed to the red light of the other ; or where the green light of one ship is opposed to the green light of the other ; or where a red light without a green light, or a green light without a red light, is seen ahead ; or where both green and red lights are seen anywhere but ahead.

O.

MERCHANT SHIPPING ACT, 1873.

CHAPTER 85.

An Act to Amend the Merchant Shipping Acts. Sections relating to engagement and discharge of seamen and cases of collision.

[5th August, 1873.]

1. This Act may be cited as “The Merchant Shipping Act, 1873.” Short title.

Construction
of the Act.

2. This Act shall be construed as one with "The Merchant Shipping Act, 1854," and the Acts amending the same, and the said Acts and this Act may be cited collectively as "The Merchant Shipping Acts, 1854 to 1873."

Agreements
with seamen.

7. Any agreement with a seaman made under section one hundred and forty-nine of "The Merchant Shipping Act, 1854," may, instead of stating the nature and duration of the intended voyage or engagement as by that section required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

Compensation
to seamen for
unnecessary
detention on
charge of
desertion.

9. If a seaman or apprentice belonging to any ship is detained on a charge of desertion, or any kindred offence, and if upon a survey of the ship being made under section seven of "The Merchant Shipping Act, 1871," it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention as the Court, having cognizance of the proceedings, may award.

Power for Her
Majesty, by
Order in Coun-
cil, to apply
certain pro-
visions of Mer-
chant Shipping
Acts to foreign
ships.

11. Whenever it has been made to appear to Her Majesty that the government of any foreign State is desirous that any of the provisions of "The Merchant Shipping Acts, 1854 to 1873," relating to the engagement and discharge of seamen, shall apply to the ships of such State, Her Majesty may, by order in council, declare that such of the said provisions as are in such order specified shall, subject to the limitations (if any) contained in the order, apply, and thereupon so long as the order remains in force, such provisions shall apply, subject to the said limitations to the ships of such State, and to the owners, masters, officers, and crews of such ships, when not within the jurisdiction of such State, in the same manner in all respects as if such ships were British ships.

It shall be lawful for Her Majesty from time to time, by order in council, to add to alter or repeal any order made under this section.

Duties of mas-
ters in case of
collision.

16. In every case of collision between two vessels, it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

If he fails so to do, and no reasonable cause for such failure is

shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect or default.

Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid, shall be deemed guilty of a misdemeanour; and if he is a certificated officer, an inquiry into his conduct may be held, and his certificate may be cancelled or suspended.

17. If in any case of collision it is proved to the Court before which the case is tried that any of the regulations for preventing collision contained in or made under the "Merchant Shipping Acts, 1854 to 1873," has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary.*

Liability for infringement of regulations in cases of collision.

P.

THE LAKES NOT INLAND.

27th July, 1858.

OPINION OF THE SUPREME COURT OF MICHIGAN, *as to whether the Western Lakes of North America are Inland, within the meaning of Acts of Congress of the United States, in the case of*

THE AMERICAN TRANSPORTATION COMPANY, *Plaintiff in Error,*

versus

MOORE, FOOTE AND COMPANY, *Defendants in Error.*

Moore, Foote & Co., of Detroit, sued the American Transportation Company for the non-delivery of certain goods contracted to be transported by the Company on Lake Erie. The goods were accidentally burned on the propeller Spaulding, belonging to the company. The main ground of defence was that the goods were thus accidentally burned, and that under the Act of Congress providing that vessel owners shall not be liable for the loss of property thus accidentally burned on ship board, the company was not liable. The Act of Congress, however, contains a provision that "this Act shall not apply to the owner or owners of any canal boat, barge or lighter, or to any vessel of any description whatever, used in rivers or inland

* See the effect given to this provision in the case of *The Hibernia*, determined in the Privy Council, on the 5th of December, 1874, upon an appeal from a judgment of the High Court of Admiralty.

navigation." The case, therefore, presented the broad question, whether the navigation of the lakes was "inland"—in substance whether the lakes in commercial character were bodies of water like the ocean itself, or only such as those which lie entirely within the boundaries of a State or the United States. The Act of Congress provides that for loss by accidental fire, where the Act applies, the owner of the vessel shall be entirely exempt from responsibility. It also provides that in all or nearly all the other cases of important liability of vessel owners, the owners shall only be liable to the extent of their interest in the vessel upon which the loss occurs.

JUDGMENT.

The question raised here is one which has never been passed upon by any Court of last resort in this country, so far as we have been informed: and its importance demands a very careful examination. We propose, therefore, to view it in the light of the old law, and of the maritime legislation of England, from which the statute in question was substantially, and, in most respects, literally derived.

The policy of England has long been to aid and encourage navigation. But so far as the liabilities of ship owners as carriers were concerned, they were left generally to be regulated by the bills of lading. From the earliest times these have exempted vessels, not only on account of the act of God, or of the public enemy, but from all losses arising from "perils of the seas," a broad and comprehensive phrase, covering most casualties not attributable to negligence of some kind in the officers or crew. Although, in some early authorities it is clearly intimated that fire is not a peril of the seas, yet as no case arose calling for the application of the doctrine, it seems to have been lost sight of for a long time. In 1785 the first reported decision occurred, holding inland carriers liable for loss by fire. *Forward v. Pittard*, 1 T. R. 27. In 1786, in consequence of that decision, the statute 26 Geo. III. ch. 86 was passed, whereby the owners of any ship or vessel were exempted from liability for loss by fire, happening on board of the vessel, and their other liabilities were limited. This statute exempted no one but the owners from this particular liability, and it has been customary to exempt the master or charterers in such cases by the bill of lading. By the statute 53 Geo. III. ch. 159, certain other qualified exemptions were made (not referring to fire, however), and this last act was, by its terms, not to extend to "the owners of any lighter, barge, boat, or vessel, of any burden or description whatsoever, used solely in rivers or inland navigation, or any ship or vessel not duly registered according to law." It had been decided already that the previous Act did not apply to lighters. *Hunter v. McGowan*, 1 Bligh, R. 573. It was also intimated in the case of the

Dundee, 1 Hagg. R. 113, that foreign vessels were not within these Acts, which were passed for the benefit of British commerce. The same principle was affirmed in the *Girolamo*, 3 Hagg. R. 187, and the *Carl Johann*, cited in the latter case. By 6 & 7 Will. IV. ch. 61, the provisions of these Acts and of 7 Geo. II. ch. 15 (which was an earlier Act, tending in the same direction), were declared to extend to Ireland. The object of all this legislation is said in *Gale v. Lawrie*, 5 B. & C. 156, to "encourage persons to become owners of ships."

Holland had, at an earlier day, passed similar laws for the same purpose; and by the Marine Ordinances of France, Book 2, title 4, art. 2, it was provided as follows: "The owners of ships shall be answerable for the deeds of the master, but shall be discharged, abandoning their ship and freight;" in this respect conforming entirely to the English statutes and the Act of Congress in all cases except fire—if, indeed, that is an exception; and such is the general maritime law of Europe, 3 Kent's Com. 217, 218. It is worthy of remark that, while by the English and American statutes, a liability to the extent of his interest in the vessel and freight is retained against the owner in all other cases where there was a common law liability, the exemption against fire is absolute and entire. But while collusion might exist in other cases, fire on shipboard could very rarely occur designedly; and, inasmuch as the maritime law requires goods generally to be stowed below deck, the vessel would commonly be destroyed by any fire which destroyed her cargo, while in other cases, where damage occurs not within the legal exemptions, the vessel may, and usually does remain undestroyed. There was no liability for fire without negligence, by the civil law. *Hunt v. Morris*, 6 Martin's L. R. 676.

It can require but a very slight comparison between our statute of 1851 and the English Acts to ascertain that it was copied from them. The general tenor is the same, and our law is referred to this origin by Curtis J., in the *Manufacturing Company v. bark Tangier*, Am. Law Reg. for June, 1858, where an action was brought for goods burned.—The peculiar term "rivers or inland navigation," which led to some discussion before us in this case, and which Judge Conkling in 1 Ad. Jur. 209, supposes to have been a clerical mistake, is adopted literally from the Act of 53 Geo. III., above referred to. So far, therefore, as English authorities bear upon the subject under consideration, they are worthy of attention. The same craft specifically exempted under 53 Geo. III., are exempted by name in our statute, which contains no more extensive designation of particular vessels. Some of the English pilot and river Acts containing similar designations have passed under the observation of the Courts, and may also be examined with profit.

It is quite evident from the tenor of the English legislation that

the intent of the Acts referred to was to strengthen their commercial marine, by encouraging persons to invest their capital without the risk of ruin from those casualties which no ordinary care on their part could prevent.—Every owner could not be a master or mariner, and self-interest would always prompt ship owners to select reliable officers and crews. There was great injustice in holding the innocent owner for matters entirely beyond his control. While, therefore, the master was still left, in most cases, liable as at common law, the owner was made exempt. But the reasons which made such a relaxation necessary or expedient in the case of vessels engaged in maritime commerce, did not apply with so much force to the excepted list. The classes named in the exception are all small vessels of burthen, incapable from their nature of withstanding the perils of the sea, and never in fact exposed to them. They are not required to be navigated by expert seamen, and are never, or but rarely beyond the reach of their owners, or of succour in peril. It will be found that in the English Courts, for these and other reasons, Acts have been repeatedly construed with reference to one class or the other by the character of the service or the class of vessels designated, where the general terms used in addition would, in the popular sense, or with another context, embrace both classes. The case of *Hunter v. McGowan*, already referred to, held that the Act of 26 Geo. III, was inapplicable to lighters, although the terms used were “any ship or vessel.” But not only was the term “ship” the governing phrase, from which a fair intent might be drawn that “vessel” meant something of kindred employment, but the Act referring to bills of lading, masters and mariners and shippers, and providing for an apportionment of loss in certain cases in a court of equity, the inference would be almost irresistible that the Act had reference to maritime business, because all the phrases are maritime. The original report of this case is not at our command, but it is frequently cited, and evidently went upon this ground. In *Blandford v. Morrison*, 15 Q. B. R. 754, under an Act which required a certain ticket or certificate for all coal delivered in London “by any lighter, vessel, barge or other craft,” it was held that a coal-brig, which brought coal coastwise from Newcastle, and delivered it at the wharf, was exempt from the penalty of the law, which was held merely to apply to such vessels as were used to unload coal from others, and did not apply to vessels in which it was originally shipped. The discussion is quite full and instructive. In *Benyon v. Creswell*, 12 Q. B. R. 899, it was held that a vessel under 15 tons burden could not be registered and that the registry was void. It had been registered, and the law required every transfer of property in a registered ship or vessel to be by a bill of sale reciting the registry. No ship was by law to be deemed a British ship without registry, but British built boats and vessels

under 15 tons, owned and navigated by British subjects, were to be admitted to be British in all navigation "in the rivers and upon the coasts of the United Kingdom." The Court held that no vessel under 15 tons could be registered at all. In *Regina v. Reed*, 28 Eng. L. and Eq., 133, it was decided that an act forbidding any person, not a freeman, to "act as waterman or lighterman, or navigate upon the river Thames between Windsor and Yantlett Creek, any wherry, lighter, or other craft," did not extend to a steam-tug; although by *Tisdale v. Combe*, 7 Ad. & Ell. 788, Acts with a different wording had been made applicable to passenger and freight river steamers on the Thames. The case of *Reed v. Ingham*, 26 Eng. L. and Eq. 164, holds the same doctrine with *Regina v. Reed*, deciding that the general words must be confined to vessels *EJUSDEM GENERIS* with those named, and that a steam-tug requires different and greater skill to manage it in its occupation, from that required for wherries, lighters or similar craft.

These cases all tend to show that such statutes, when mentioning expressly certain classes of vessels, and then using general words, intend to apply the latter to vessels *ejusdem generis*, either of build or business, and not to extend the language beyond.

Besides the well-understood meaning of "inland navigation" in England, and the natural inference to be drawn from the use of the vessels particularly named under the rules laid down in the cases cited, some light may be drawn from the course of the English courts in dealing with kindred maritime questions not immediately applicable to these statutes so far as the exceptions are concerned.

In *Battersby v. Kirk*, 2 Bing. N.C. 584, it was held that Ireland was a place "beyond seas," in regard to the Bristol Dock Acts, as it had previously been decided under the statute of limitations. In *Davison v. Mekifben*, 6 Moore, 387 (S. C. 3 Brod. & Bing. 112), it was held that a vessel engaged in general freighting between Belfast and London, and which at the time the question arose was proceeding down the Thames from London on her way to Belfast, with a general cargo, was neither a "coasting vessel" nor "an Irish trader, using the navigation of the river Thames as a coaster." The statute of 6 Geo. IV. c. 107, declared that hereafter all trade by sea from one part of the United Kingdom to another, or from any part of the Isle of Man to another, should be deemed to be coasting trade in any matter relating to the trade or navigation or revenue of the realm, and all ships while employed therein should be deemed coasting ships. The Customs Act of 8 & 9 Vict. c. 86, s. 113, contains the same provisions. In *Shepherd v. Hill*, 32 Eng. L. and Eq. 533, it was held that vessels running between a port in England and the Channel Islands were not coasting vessels, because, although subject to Great Britain, they were no part of the realm, and were not within those Acts. And where a vessel had come from Calcutta to

London, and there discharged her cargo, and thence proceeded in ballast to Liverpool, it was held that the voyage from London to Liverpool was not a coasting voyage within the Pilot Acts. The reason why coasting vessels were exempted from employing pilots was because the masters, from their frequent voyages, must become familiar with the navigation; and this reason did not exist in favour of an East India ship, the "*Agricola*," 2 W. Rob. 10; and, having employed a pilot, the ship-owners were held not liable for a collision while he was on board. In *Gatliffe v. Bourne*, 4 Bing. N.C. 314 (S. C. *Bourne v. Gatcliffe* in Exch. Ch. 3 Mann. & Gr. 642), where goods were shipped from Dublin to London, and destroyed by fire after being landed on the wharf, it was admitted in both courts that if the fire had happened on board, the exemption of 25 Geo. III. would have applied to save the owners from liability. The cause of action arose several years after the Irish trade had been embraced within the coasting trade. The only English case reported arising directly under the Act of 26 Geo. III. is *Morewood v. Pollock*, 18 Eng. L. and Eq. 341, where goods were burned upon a lighter in the harbour of Mobile while in transit from the shore to an English vessel. It was urged that the lighter might be considered as constructively a part of the ship, and that the goods might thus be deemed "on board." The Court, however, said, "It cannot be said that the lighter was a part of the ship at the time. It belonged to other proprietors, and was employed for the particular purpose of loading by the owners of the *Barbara*. To bring a case within the Act, the fire must, I think, be on board the vessel which is the property of the owners, and that was not so here. Again, the goods were not on board the ship of which the defendants were the owners." And judgment was given for the plaintiffs. This case leaves it somewhat in doubt whether, if the goods had been on board of a lighter or shallop belonging to the ship, they might not have been considered on board within the Acts. The case of *Johnson v. Benson*, 1 Brod. & B. 454, inclines that way upon another class of liabilities under a bill of lading. Judge Curtis, in the *Manufacturing Co. v. the barque Tangier* above referred to, decided in conformity with *Morewood v. Pollock* and *Gatliffe v. Bourne*, that goods burned upon a wharf were not within the Act of Congress.

The whole current of decisions in the English Courts tends to show that the maritime business has always been regulated as entirely distinct from any other, and that the immense traffic in the narrow seas has not been allowed to be withdrawn from its proper character as seagoing commerce. So far as the term "inland navigation" is concerned in the English Acts, no serious difficulty could arise upon it. Every harbour in England is within the body of a county, while all waters outside of harbours are part of the High Seas, and under the jurisdiction of the Admiralty. Lighters, barges, and canal boats

are all inland craft within all the definitions. The writers on English commerce all treat of inland navigation as carried on by small or light boats, and confined to rivers, canals, and streams strictly land-guarded; and the decisions have invariably coupled together the class of vessels and their proper employment, with the language of the Acts of Parliament applicable to them. The coasting trade is defined by statute to be a trade by sea, and embraces now, as we have seen, much business that, before the new laws, was actually foreign in legal contemplation.

In the United States it is equally regarded as an external sea-going trade, and this not only by Acts of Congress, but by Courts, and is classed separately from all internal commerce. See 2 Kent's Com. 599, 600; 10 J. R. 10, 11; *Hastings v. Ropper*, 11 Pick. 41. See also, upon this subject, Webster's Dic., "Navigation—Inland Navigation." Rees' Cyc., "Inland Navigation," "Barge," "Craft." And also "Lighter," "Barge," "Gabbert," in any marine dictionary.

The legal and popular sense of the term "inland," when applied to navigation and commerce, differs somewhat from the geographical term as applied to bodies of water. Geographers have classed nearly all large bodies of water, except the great oceans, as "inland seas." The Mediterranean, the North Sea, the Gulf of Mexico, and the Baltic, are all included, geographically, within the class. (Murray's Enc. of Geog., p. 188.) The Baltic has been in our day a mare clausum under the Danish authorities, and most nations have acquiesced in their claim of toll for entering it; yet no one would regard its navigation as in any sense inland navigation. The Mediterranean, and even the Adriatic, although geographically inland, are not so commercially. And the old English claim that all the narrow seas were close seas, and subject to British supremacy, never removed them from Admiralty jurisdiction, or regarded commerce on them as inland commerce. The high seas commenced at low water mark, or at the mouths of estuaries and harbours, and nothing was inland that was beyond those lines.

It is very obvious that inasmuch as all harbours (except, perhaps, the open roads), are inland, the test of character could not be whether a vessel merely entered inland waters in the course of its business, but must be found in its general use. The object of the law being to build by general maritime commerce, we have to look to that for a criterion. The vessels not embraced by the terms of the Act are all of a class, peculiarly adapted to inland carriage. They are boats of burden unsuited to the open waters. Yet it might well happen that larger vessels may be employed at times in strictly inland commerce, and if so, they would undoubtedly be held by their trade. A general rule is necessary, and the rule is easily and simply applied to the ordinary occupation. A vessel running from New York to Boston is a seagoing vessel, although both her termini are inland.

A harbour lighter is not a sea-going vessel, although she may at times, be outside of the harbour. The English Courts have found no difficulty in making such applications of the law. Under the Pilot Acts, the questions are of frequent occurrence. The case of the *Agricola*, already referred to, and also the case of *Hunter v. McGowan*, are of the same character. In *Regina v. Tibble*, 30 Eng. L. and Eq. 372, the question whether a vessel came within the Thames River Acts, was made to depend upon her actual and habitual employment, although the term "western barge" sought to be applied to her, did apply, in the popular sense, but not, as the Court held, in its legal meaning. And in the United States District Court for this district, the Act of Congress exempting ferry boats from the requirements applied to general passenger steamers, was construed to exempt boats built and generally used as ferry boats, although temporarily employed on a short trip off from the ferry route, but in business quite similar to ferriage. It was held the law could not have been intended to require of boats upon short routes, where passengers were on board but a brief time, and needed no extensive accommodations, the same rules which governed steamers which went on longer trips, and where there was need of conveniences and safeguards. (*U. S. v. the Ottawa*, 1 Newberry's Adm. R. 536.) A similar rule was applied to such boats in reference to registry and enrolling Acts by United States Court in Missouri. (*United States v. the steamboat James Morrison*, 1 Newberry's Adm. R. 241; *United States v. steam ferry boat William Pope*, *Id.* 256.) There can never be any practical difficulty in determining whether a boat is employed in inland navigation, when the character of that navigation has been determined.

In *Wallis v. Chesney*, 4 Am. Law Reg. 307, the District Court of Maryland declined jurisdiction of a contract to carry coal on a canal boat, as not a maritime contract, because a large portion of the route was inland on a canal, although forty miles of carriage was on tide water. And other cases will be referred to, under another branch of the inquiry.

When an Act is passed by Congress, modelled upon Acts of Parliament, and containing similar qualifications, the rules which apply to one should have some, if not a controlling force, in construing the other. We have referred to the English Statutes from which this law is taken, and we now propose to refer to the commercial legislation and policy of this country to aid us in determining the legal intentment of our statute. These are safer guides than any individual opinion.

The commerce of the lakes has been regulated by Acts of Congress from the outset of our history. Prior to 1831, navigation upon them was regulated by the laws applicable on the seaboard, vessels being registered for the foreign and enrolled and licensed for the coasting trade. In 1831, as the necessities of commerce had increased, pro-

vision was made for special enrolments, which would permit vessels to be engaged in either coasting or foreign trade, and no registry was required. This in no wise altered the navigation laws, otherwise than to favour lake navigation by opening the foreign trade to enrolled vessels. (*U. S. v. the Margaret Yates*, 28 Vt. R. 665.) In 1845, Congress by statute extended the jurisdiction of Admiralty over the lakes and their connecting waters—a jurisdiction intimated by the United States Supreme Court, to have existed without legislation, on account of the character of these waters. (*Fitzbush v. the Genessee Chief*, 12 How. 443.) The registry law passed in 1850 by Congress (9 St. 440), requiring transfers of United States vessels to be recorded in the Custom Houses not only applied to lake vessels, but has been held by this Court to exclude State legislation on the subject. (*Robinson v. Rice*, 3 Mich. 235.) The steam-boat inspection law of 1838, for preventing accidents on the water, was made in express terms to require of lake steamers on the great lakes the same safeguards prescribed on the ocean (5 St. 305). It is well known that the enactment of this law was procured on account of fatal accidents on Lake Erie. The steamboat law of 1852 is in terms a mere amendment of the law of 1838. The passenger steamers on the lakes are by that law left on the same footing with ocean steamers, while ferry boats, tug and tow boats, and steamboats, under 150 tons, employed on canals, were exempted entirely from the operation of the statute, and river steamboats of all sizes were partially exempted, being required to have but one life boat. (10 St. 62.)

In 1851, when the Act to limit the responsibility of ship-owners was passed, the lake commerce had been placed by the prior legislation upon the same footing with that of the ocean. It had been recognized as subject to the same dangers and partaking of the same character. The loss of the *Lexington* by fire, on Long Island Sound, and the decision of the Supreme Court on the liability of her owners, in 6 How. R. 344, were the immediate occasion of its passage. The peculiar interior position of the Sound had, as early as 1795, caused a special enactment to be passed exempting vessels crossing from Long Island to Rhode Island from the rules applying to vessels trading between districts not adjoining—a provision similar to that which, in 1831, relieved lake commerce from like difficulties. We might well suppose that a law drawn up under such circumstances to exonerate ship-owners would not stop short of providing for all cases of the same character. After the broad legislation regulating our lake trade, and considering its true character, which had certainly become somewhat prominent, we cannot be warranted in holding that a statute applying or meant to apply to the protected waters of the Sound, is inapplicable to the more exposed navigation of the lakes, on the ground that such navigation is inland, unless such a meaning is very clearly to be derived from the terms of the Act of

Congress. Let us, therefore, see whether there is any other, and, if so, what inland navigation to which the language is applicable.

It is very clear that where commerce is confined exclusively to the territory of a single State, Congress has no control over it. (*Gibbons v. Ogden*, 9 Wheat. 1; *Milner v. N. J. R. R. Co.*, Am. Law Reg., Nov. 1857.) The great canals of New York, Ohio, Indiana, Illinois, and Pennsylvania, and much interior river navigation, come under the head of local and domestic commerce, and may well have been intended in this exception. The business referred to by the District Court of Missouri in the cases cited is of the same kind. But we have also several large rivers which are not internal as far as single States are concerned, and yet are inland in the sense of being entirely sheltered by land within the Republic, and capable of being navigated in safety by any description of boats or small craft. We have many large and important harbours where hundreds of lighters, tugs, barges, and steamers of various sizes are plying constantly in a purely inland service, but subservient to foreign trade, or that between States. We have also in several places canals entirely within single States, which are used to facilitate the passage of rivers which pass through different States, to avoid rapids and furnish means of continuous navigation. Some of these rivers are on the borders of States, and divide them; others are within single States, but are used in commerce between different States.

The Ohio and Mississippi are boundary streams; the Missouri traverses one State and bounds others; the Delaware, the Susquehanna, the Potomac, the Tennessee and Cumberland Rivers, and several others, occupy similar positions, while most of the Hudson and the whole of James River, and several other streams, such as the Sacramento, and many more, are within single States, and yet open to commerce from tide-water. Upon all of these streams there is important commerce within control of Congress, and laws have been made expressly with reference to it. Canal boats have been directly exempted from marine hospital taxes, and from the ordinary fees for registry, enrolment, and licence; and they cannot be libelled for wages. This is the case even when their terminus and considerable portions of their passage are in tide waters. (*Buckley v. Brown*, *Brightly's Dig. U. S. Laws*, 305.) Their crews are not entitled to marine hospital relief. (*Ib.*) The reason of this is very obvious, for although within Congressional jurisdiction, their employment is not maritime. Boats and lighters without masts, or if masted not decked, employed in the harbour of any town or city, are entirely exempted from the enrolment and licence acts. (1 St. 317, 318.) It has been held that coal barges on the Monongahela River are not within Admiralty jurisdiction. (*Jones v. Cincinnati Coal Co.*, 3 Am. Law Reg. 391.) The Steamboat Inspection Act does not, as has been stated, apply to tugs, or towing boats, or ferry boats, or canal

steamers, and requires but a single lifeboat on the largest river steamers. And the Act of Congress of 1845, which extended Admiralty jurisdiction over the lakes and straits between them, did not undertake to do so over our largest rivers. And whether courts have done so or not, the course of legislation has certainly extinguished them. And the decision in the case of the *Genessee Chief* does not, in fact, settle any question of jurisdiction on any water but the lakes. In *Jones v. the Cincinnati Coal Co.*, before cited, Judge Grier denies the applicability of the doctrine to any but enrolled and licensed vessels anywhere, and in referring to that case, intimates very plainly that it was not intended to reach river navigation.

When, therefore, after providing that "the owners of any ship or vessel" shall be free from liability on account of fire on board, not occasioned by their design or neglect, the statute provides that "this Act shall not apply to the owners of any canal boat, barge, or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation," we may properly look to the existing legislation on such navigation to determine the effect of the Act. And when we find all the vessels named have been exempted from many of the duties and burdens common to other navigation, and when especially we find such of them as are propelled by steam, exempted wholly or partially, from the provisions devised to guard against fire, there is good reason for excluding them from some of the privileges extended by Congress to other vessels. And there is in the character of the navigation itself, much to distinguish it from lake or ocean service. There is no danger of foreign competition in such trade, unless in a very few frontier places, and not much there. The risks to vessels, with the one exception of fire, are lighter, and when danger occurs, it is with less hazard of entire destruction of the cargo. Danger from storms or wrecks on these sheltered waters is comparatively trifling. The danger from fire is greater from the light construction of the boats, and the mode of stowage, upon rivers than upon open waters. The opportunities for theft and embezzlement are infinitely greater where a safe landing can be made anywhere, and where stoppages occur every few hours, if not every few miles. Upon the lakes cargoes are more securely stowed, and are not so easily shifted or robbed. And while the characters and risks of the various kinds of business differ so materially, there is another respect in which lake navigation greatly subserves our national policy. The merchant marine has been fostered in Great Britain and America, not only for commercial, but also for naval purposes. The mariners receive a training which enables the nation to man its navy in war with competent seamen. In this country, with a small navy, our merchant vessels, as well as seamen, form important elements of strength. Not only on the ocean, but also on the lakes, the same

ships have been used effectively for the double purposes of war and peace. Our lake trade employs great numbers of able mariners, fitted for service on any ships or on any waters. Our river trade is mostly served by landmen, or boatmen who would rate as such on shipboard. Not only therefore have we a large navigation, either inland, or of an inland character, which is subject to Congressional regulation, and which may easily satisfy the terms of the Act, but it differs in most, if not in all respects, as much from lake, as it does from ocean business, both in its public and in its private character and policy.

But lake navigation is not inland navigation in any sense. The lakes are not within the borders of any State, and, except Lake Michigan, are not within the United States. But their border character alone would not serve to make them maritime, or change the scale of their commerce. It is their intrinsic nature and not their position alone which characterizes their commerce, but their position is also important in some views of national jurisdiction. Our courts have long since learned to disregard the exploded notion that there is any radical difference between salt and freshwater commerce. The old rule of the English Admiralty, and its reasons are clearly stated in the sea laws, in a treatise which is appended to 2 Peters, Adm. Reports: "In *AQUA DULCI* a ship may become a deodand; but in the sea, or in *AQUA SALSA*, being an arm of the sea, though it be in the body of the county, yet there can be no deodand of the ship, or any part of it, though anybody be drowned out of it, or otherwise come by their death in the ship, because on such waters ships and other vessels are subject to such dangers upon the raging waves in respect of wind and tempest; and this diversity all our ancient lawyers do agree in." (p. 71.) The reason is a sound one, and does not depend upon the freshness of the water, but in England generally or universally coexists with it. The perils which are referred to are as characteristic of the lakes as of the ocean. As in the *Genessee Chief* case (12 How. R. 443), the Supreme Court, referring to the Act of Congress of 1845, extending the Admiralty jurisdiction over the lakes, say (p. 453), "If this law, therefore, is constitutional, it must be supported on the ground that the lakes, and navigable waters connected with them, are within the scope of Admiralty and mercantile jurisdiction, as known and understood in the United States when the constitution was adopted. If the meaning of these terms were now for the first time brought before this Court for consideration, there could, we think, be no hesitation in saying that the lakes and their connecting waters were embraced in them. These lakes are in truth inland seas. Different States border on them on one side, and a foreign nation on the other. A great and growing commerce is carried on upon them between different States and a foreign nation, which is subject to all the

incidents and hazards that attend commerce on the ocean. Hostile fleets have encountered on them, and prizes have been made; and every reason which existed for the grant of Admiralty jurisdiction to the general government on the Atlantic seas, applies with equal force to the lakes." And the Court very forcibly repudiates the supposed distinction between fresh and salt waters.

The true distinction between inland navigation and any other, as we think, must be found in its character as confined to narrow or land-guarded internal waters, contradistinguished from that which is maritime in its nature. This is the only distinction which can be drawn from the English practice; it is the only one which distinguishes the real character of the different trades, and it is the only one that has any real foundation in the risks and exigencies of commerce. Judge Grier, in the case of *Jones v. Cincinnati Coal Co.*, above cited, uses this language, referring to coal barges (that case arising out of a collision between such vessels): "A remedy in rem. against such a vessel, either for its contracts or its torts, would not only be worthless but ridiculous, and the application of the maritime law to the cargo and hands employed to navigate her, would be equally so." "If it was unreasonable to refuse to ships and steamboats on our great lakes and rivers the benefit of the remedies afforded by Courts of Admiralty, it may be equally so to apply the principles and practice of the maritime law to everything that floats on a fresh-water stream. Every mode of remedy and doctrine of the maritime law affecting ships and mariners, may be justly applied to ships and steam-boats, but could have no application whatever to rafts and flat-boats."

If that is inland navigation which is carried on upon inland waters in the geographical sense, we shall be led to strange results. These lakes are classed by geographers, as well as courts and mariners, as inland seas, and are not lakes at all in the proper geographical sense, because they have a direct outlet to the ocean. (1 *Murray's Encyc. of Geog.* 188, 201; 3 *Ibid.*, 350.) Inland seas embrace, according to the classification, the Baltic, North and Mediterranean seas, the Gulfs of Mexico, and St. Lawrence, Hudson's Bay, and all other bodies of water separated from the open ocean, and yet opening into it.

The Baltic, indeed, except during the prevalence of west winds, is comparatively fresh, and all its saltness is derived by influx from the ocean. The same remark is applicable with still greater force to the Black Sea. The outlets to both are narrow, and controlled by single powers. But the inland waters of Europe are the seat of an extended commerce, and the ocean is but the passage way to reach it. The ports which, geographically, are on inland waters, control the commerce of the world. The Atlantic ports of Europe are comparatively insignificant beside them. And not only is this so, but

the whole Admiralty law was formed and settled in those waters. The Rhodian law, the tables of Amalfi, and the Consolato del Mare, were the offspring and the guide of Mediterranean commerce, while the laws of Wisbuy and of the Hanse towns were devised for the Baltic. The principles thus adopted, suggested by the early exigencies of a commerce in those inland waters, which was almost insignificant compared with the lake trade, have stood the test of time throughout the whole civilized world, and every Admiralty code is founded upon them. A construction which would make lake navigation inland navigation, simply because the lakes are classed by geographers as inland waters, would apply with equal force to those European waters which were the very cradle of maritime power. And to do so, and yet leave the navigation of Long Island Sound out of such a classification would be to ignore every principle of commercial usage.

Not only has the lake commerce been put upon a maritime footing by the navigation laws, and by the decisions of Courts, but it, in point of fact, is in all respects as much so as that of the Baltic and Mediterranean. The vessels used in its ordinary navigation are not only capable of employment, but are actually employed in trans-Atlantic voyages, while some, at least, of the lake fleet, were brought over originally from Europe. For more than thirty years our government has been striving to secure the free navigation of the St. Lawrence for the purpose of enabling lake vessels to communicate with the ocean free from the restrictions imposed on them by the British laws. This privilege was claimed as a matter of right by the Executive department in 1826, and was placed upon the ground that a right to navigate the lakes and the ocean gave a corresponding claim to navigate their connecting waters. Mr. Clay, then Secretary of State, insisted that if the St. Lawrence were regarded as a 'strait' connecting navigable seas, as it ought properly to be, there would be less controversy. And he proceeds thus: "The principle on which the right to navigate straits depends, is, that they are accessorial to those seas which they unite, and the right of navigating which is not exclusive, but common to all nations, the right to navigate the seas, drawing after it that of passing the straits. The United States and Great Britain have between them the exclusive right of navigating the lakes. The St. Lawrence connects them with the ocean. The right to navigate both (the lakes and the ocean) includes that of passing from one to the other, through the natural link." (Correspondence of 1826, 35 Niles' Register, 411 *et seq.*)

Mr. Wheaton has expressed similar views on the right to navigate straits (Wheat. Int. Law, 240, 250), and applied them to the question of the Danish Sound dues—concerning the right to which our government took the same ground which had been asserted on the St. Lawrence. Both questions are now set at rest by treaty, and our

vessels have the right of passage to the ocean unmolested. (10 St. U. S. 1091. Reciprocity Treaty.)

The lake commerce being in fact maritime in its nature, and having been thus recognized as such by all the departments of the federal government, and regulated as such by Congress, we cannot hesitate so to consider it in construing the Act in question. And being satisfied that the inland navigation mentioned in the Act cannot properly comprehend the maritime commerce of the lakes, we are of the opinion that the plaintiff in error is not liable for the property destroyed by fire on the propeller Spaulding, such fire not having been caused by design or negligence; and that the Court below erred in charging the jury that the navigation of the lakes was inland navigation within the meaning of the Act of Congress.

Q.

VICE-ADMIRALTY COURT, HALIFAX, NOVA SCOTIA.

The four following decisions were rendered at Halifax, Nova Scotia.

The three first have reference to the jurisdiction of the Admiralty, and the last to the Dominion Act of 1867, accounting the ports of the Dominion to be "Home Ports" in relation to each other, and precluding the enforcement of a bottomry bond in the Admiralty.

CITY OF PETERSBURG.

28th January, 1865.

The Court of Vice-Admiralty has no jurisdiction over a contract for wages differing from the ordinary mariner's contract, an important principle involved in the construction of the "Vice-Admiralty Courts Act, 1863."

JUDGMENT.—*Hon. William Young, Chief Justice, sitting as Judge of the Vice-Admiralty Court, Nova Scotia.*

The City of Petersburg is a blockade runner, plying between Bermuda and Wilmington, the voyage in question in these suits having terminated, in consequence of the fever at the former of these places in the month of September last, at this port. Two of the plaintiffs, Nichol and Bailey, shipped, the one as chief cook, and the other as second steward, at Bermuda, for the round voyage, and were discharged by Captain Fuller, the then master, for alleged incompetence, at Wilmington, but were brought here in the ship, in obedience to the laws of the Confederate States. The third libellant, John Valley,

was shipped at Wilmington, as chief cook, in place of Nichol. The ship left Bermuda on the 8th of August, and arrived at Wilmington on the 13th—was detained till the 29th at quarantine—left Wilmington again on the 5th September, and arrived here on the 13th. Captain Fuller returned in her, and refused to pay the balances claimed by the three plaintiffs. He appears to have left this for England along with Mr. Campbell, one of the owners, in the steamer of 29th September, a few days before these actions were brought. Webb, the chief steward of the ship, appears also to have left before they were brought,—so that the two principal witnesses for the defendants could not be examined.

The libels exhibited by the plaintiffs are in the ordinary form, but omit in the schedules, as required by the rule, a statement of the sums received on account and the balances claimed to be due; these balances, however, appear in the affidavits. In point of fact, Nichol claims \$120, Bailey \$80, and Valley \$120, with the difference of exchange and costs. The responsive allegations in the three suits are nearly the same. The hiring alleged in John Nichol's libel, No. 216, was for hazardous services, and wages therefor said to have been promised in one sum of \$180, payable, part on leaving Bermuda, and the remainder on arrival of the ship at the termination of the voyage there or at Halifax; while the responsive allegation pleads in the first article, that the wages were payable in three sums each of \$60—the first on leaving Hamilton, the second on the termination of the voyage at Bermuda or Halifax, and the third as an additional bounty, "provided the master was satisfied with the plaintiff's conduct during the voyage." The second article of the allegation sets forth the incompetency of the plaintiff and his discharge therefor. The third alleges that the master was not allowed to leave the plaintiff, being a British subject, at Wilmington, but was compelled to bring him to Halifax as a passenger. And the fourth claims the benefit of the 189th section of the Merchants' Shipping Act, 1854, the sum claimed by the plaintiff being under £50. There are no other pleadings in either case, and by agreement the evidence taken in the three suits was to be used in all or any of them as far as it might be applicable. The three were argued together before the late Judge Stewart, and a re-argument having been ordered by him on account of the difficulties which the cases presented, they were again heard before me on the 20th and 21st instant.

The first object of inquiry is the nature of the contract. This is common to all the three cases, the plaintiff's counsel contending that, with some variation in the mode of payment, it is the ordinary engagement for seamen's wages, to be considered and dealt with as such; and the defendants insisting that it is a special contract, and as such, not within the jurisdiction of this Court. On this very material point the pleadings, as we have seen, and the evidence are

conflicting. There is some testimony as to the usage of the trade ; several companies, as we know, being engaged in the hazardous enterprise of blockade running ; but Dunbar says that every company has its own prices and mode of payment ; and Wade testifies that the wages in the Old Dominion and City of Petersburg, which were owned by the same company, were different from those in other ships. Nichol says that his wages were to be \$180 in all, payable in gold, of which he received \$60 in advance, "and the balance was to be paid on arrival if they made the clear trip." He denies that it was optional with the captain to deprive him of his wages ; "such a thing," he says, "was not mentioned when I hired ; I should not have gone." Bailey says in reference to this case, differing somewhat from Nichol, that at the hiring "three sixties were mentioned—one sixty when the pilot left, the remainder on the termination of the voyage. . . . No condition," he adds, "was mentioned as to stopping any part of our wages or anything else. . . . The captain said he would give Nichol three sixties—those were the words he used—he said nothing about cotton money." And again he says, "Nothing was said about bounty or cotton money." As to his own hiring, Bailey says, "The captain agreed to give me \$120 for the voyage, payable \$40 advance when the pilot left us (which he admits having received) and \$80 on termination of voyage." Nichol, confirming him, again says, "Nothing was said about bounty or cotton money—nothing more was said between us and the captain."

No ship's articles were signed, on account, it is said, of the nature of the trade, and Fuller and Webb being absent, there is no other evidence of what actually passed at the hiring of these men. It is obvious, however, that something more either did pass or was understood between the parties. No such contract as is here represented was had with any other of the men either of the Old Dominion or the City of Petersburg. Nichol himself says "that the custom of wages was well understood among the men,"—and what that custom was is abundantly proved by the witnesses for the defence. Mr. Hull, formerly chief, now second, officer of the ship, says, "The rate in ships of the class of the City of Petersburg is \$60 for the chief cook when we leave port for the passage from Hamilton to Wilmington. If the man keeps on, when he comes back to any British port, \$60 more,—he also gets cotton money at the owner's option,—some men get it and some do not. . . . By cotton money," he says, "I mean a present from the owners at their option if the men give satisfaction. . . . What the owners pay on leaving Bermuda is an advance ; what they agree to pay leaving Wilmington is a bonus ; cotton money is a present." Of his own pay, he says, "Captain Fuller hired me. My wages, as second mate, were \$75 for the passage in ; if I came out in the ship, \$75 more ; and if I gave satisfaction, \$75 more as cotton money. I gave satisfaction, and got it." Alex-

ander Cameron, supercargo of the ship, and a partner in the adventure, says : " The men shipped at Bermuda, and were paid in advance there as by tariff ; after running the blockade, and reaching a neutral port (that is, outside the Confederacy), with a cargo, they are paid bounty and cotton money ; the cotton bounty is optional with the captain—provided the conduct of these men deserves this cotton bounty they get it, otherwise not." " Copies of the tariff," he adds, " were supplied to the chief officer and engineer."

Captain Page, the master of the *Old Dominion*, also says " that the cotton money was payable to the men provided they gave satisfaction ; that the bounty system is perfectly understood by the seamen, as well as by the party engaging, when they engage." Thomas Purcell, chief steward of the *Old Dominion*, produced a copy of the tariff common to both vessels, and which he read to the men of his department. The crew had one copy forward, and it was read by Lowrick, one of the witnesses for these plaintiffs, but not examined upon this point. Purcell says that Mr. Campbell, one of the recognized owners, called him aft, and read the tariff to him, and asked him if he was satisfied. He said he was ; and that was the contract the witness entered into. The tariff from which the copy marked A was made, distinguishes the monthly pay or advance from the two bounties payable on return, and at the foot says " Cotton money will only be paid to those whose conduct has satisfied the captain, chief engineer, and mate."

Now, it must be conceded, I think, to the plaintiffs, that the exact nature of this contract has not been unmistakably and clearly shown on the defence. The option of paying the cotton money depends, according to one witness, on the satisfaction of the owners ; according to another, on that of the master ; and according to the tariff, on the combined satisfaction of the master, engineer, and mate. Hull also says " that it was optional with the captain to have discharged all the crew at Wilmington, and in that case they would have forfeited the rest of their wages." But while in the absence of ship's articles (a want which may be very injurious in such suits to the owners, but is never allowed in this Court to operate against the seamen), a certain degree of obscurity rests upon this contract, it is impossible to view it, upon the whole evidence, as an ordinary contract for mariners' wages. It sprang, as I have already said, out of an exceptional and hazardous trade, new in all its circumstances and relations, which has not been attacked in this case as illegal, but which differs widely from the usual conditions, and can hardly be governed by the general rules entitling the seaman to his wages on performance of his contract of service. (Abbott on Shipping, 658.)

In the case of the *Rilby Grove*, 2 W. Rob. 61, Dr. Lushington observes " that unfortunately what is or is not a special contract, no one has attempted to define. None of the decided cases have defined

specifically what is a special contract, and upon this point," he says, "I am left entirely to my own judgment." But none of the decided cases resemble this. I shall say nothing of the old authorities in Prohibition cited in *Abbott*, and in the case of the *Sydney Cove*, 2 *Dodson*, 12. Of those in the Admiralty—the cases above mentioned of the *Sydney Cove* and the *Rilby Grove*, both of them involving partnership transactions; the *Isabella*, 2 *W. Rob.* 241, where there was a claim for the value of a slave in addition to the wages; the *Mona*, 1 *W. Rob.* 141, where the promovent was to receive a gross sum for proceeding from *St. Helena* to *England* and his expenses back; these and other cases were not more distinguishable from the ordinary mariners' contract than the present, I think, must be held to be. In my view it cannot be considered otherwise than as a special contract, separable, it may be, into parts, as was done in the case of the *Tecumseh*, 3 *W. Rob.* 109, 144; but as it is pleaded in the responsible allegations here and appears in proof, essentially a special contract.

Now, there is no position better established in the Court of Admiralty than its want of jurisdiction in such a case, till the jurisdiction was conferred by the Act of 1861, the 24 *Vict.* ch. 10.

In the *Mona*, decided in 1840, *Dr. Lushington* said: "Looking to the authorities that have been cited, their effect is plainly this, 'that when there is a special agreement differing from the ordinary mariner's contract this Court has no power to adjudicate, and the cognizance of the question belongs to another tribunal.'" Lord *Stowell* decided the *Sydney Cove* on that ground.

In the *Debrisca*, decided in 1848, he said: "the right of the mariner to sue is denied, not only upon the ground that there has been an abandonment of the voyage, but that his engagement with the owners was in the nature of a special contract. This, I apprehend, as far as this Court is concerned, is a fatal objection. I cannot find any authority that would authorize me to interfere; neither do I see in what way I could proceed to ascertain what is the amount of indemnification to which the mariner is entitled for a breach of the contract. The matter lies entirely and exclusively within the functions of a jury, whose functions I should usurp in adjudicating upon it."

The rule was recognized also in the Irish Court of Admiralty in the case of the *Enterprise*, 5 *Law Times Rep.* (N. S.) 29. And in the same vol., fol. 210; and in *Lush.* 285, is the case of the *Harriet*, where the counsel submitted that any agreement by a mariner *dehors* the ship's articles, which are appointed by the legislature, is a special agreement. And *Dr. Lushington* said: "However differently the Courts of Common Law may now be disposed to view the jurisdiction of this Court from what they were in former times, I am bound by the limitations imposed on my predecessors, and acted upon by them

and by myself in former cases; and I cannot enforce any contract for seamen's wages different from the ordinary mariners' contract." His Lordship added, "I am happy to say that an Act is now passing through the legislature, which will remedy the jurisdiction of the Court, which in the present case has operated with such hardship on the plaintiff."

This Act I have already referred to, and (sec. 10) runs thus :

"As to claims for wages and for disbursements by master of a ship. The High Court of Admiralty shall have jurisdiction over any claim by a seamen of any ship for wages earned by him on board a ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship : provided always, that if in any such cause the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court."

This section gives in express terms the jurisdiction that was formerly wanting—it extends to a claim by a seaman of any ship for wages earned by him on board the ship, "whether the same be due under a special contract or otherwise," and the plaintiffs' counsel contended at the hearing that the Act of 1861, as it gave the power to the High Court of Admiralty, gave it also by construction or *ex necessitate* to the Courts of Vice-Admiralty all over the empire.

I confess I should have had great difficulty in assuming this jurisdiction, even had the Act of 1863 (the 26 Vict. c. 24), not been passed. And as it is, I think the question must turn entirely on the construction of the two Acts.

The commission to my predecessor, it is true, dated in 1846, empowers him "to hear and determine all causes according to the civil and maritime laws and customs of our High Court of Admiralty of England in our said province of Nova Scotia or Acadia, and maritime ports of the same and thereto adjacent whatsoever." The commission of the Hon. Henry Black, the Judge of the Admiralty at Quebec, dated in 1838, runs in the same, or nearly the same words (a). And in the case of the Friends (b), he quotes these words in the commission, but accompanies them with remarks, which, coming from so accomplished a jurist are entitled to our respectful attention :—

"The Judicial Commissions of the Admiralty are of very high antiquity, and were settled long before the statutory provisions and legal decisions, whereby the jurisdiction of the Admiralty, as it was originally exercised, was materially abridged. But, 'it is universally known,' says Lord Stowell, 'that a great part of the powers given

(a) L. C. Ad. R. p. 376.

(b) Ib. p. 115.

by the terms of that commission are totally inoperative, and that the active jurisdiction of the Admiralty stands in the need of the support of continued exercise and usage (the *Apollo*, 1 Hagg. 312):' and again, in the case of the *Atlas*, he says, 'This Court, except upon the subject of prize, exercises an original jurisdiction, upon the grounds of authorized usage and established authority. The history of the laws of this country shows full well that such authorized usage and established authority are the only support to which this Court can trust, except in respect to the subject to which I have alluded (2 Hagg. 55).'"

"In all cases of jurisdiction the Court is called upon to perform a delicate and important duty. As on the one hand it is the duty of the judge to maintain unimpaired the jurisdiction wherewith the law has invested him, so on the other he must be cautious not to assume authority on matters beyond the pale of his jurisdiction. He can have no inclinations or bias either way. The power which he is to exercise is held by him in trust, and must be maintained in its integrity, neither enlarged nor abridged, within the precise limits which the law has defined. Sir Thomas Strange has expressed with peculiar felicity the duty of a judge in this particular, 'It is said in many cases *boni judicis est ampliare jurisdictionem*. If for *jurisdictionem* be read (as was always read by Lord Mansfield) *justiciam*, it is a noble maxim. If an object and matter of jurisdiction exists, it is indeed the part of a judge, so far as circumstances may admit, to administer an enlarged and amplified justice, embracing the interests of all parties and all the bearings of the case in any other sense of the maxim. It seems to me that the strength of every jurisdiction consists mainly in a temperate admeasurement of it by those in whom it is vested; and that so far from its being the duty *boni judicis ampliare*, it becomes none more than judges to set to others in power a different example, instead of, by overstrained constructions, and upon fanciful imaginations, to be outstepping the bounds set by their commission. Neither are we to presume that justice will not be done, though this Court, sustaining the plea, should decline the office of rendering it."

It is true that in the case of the *Friends* he decided that the jurisdiction claimed by the plaintiff belonged neither to the High Court of Admiralty nor to the Vice-Admiralty Court. But his remarks, as we have seen, bear on the general question of jurisdiction, and a marked distinction, if it did not previously exist, has been drawn by the recent Acts between the powers of the High Court of Admiralty and the Vice-Admiralty Courts.

The practice of the two is confessedly different,—that of the Vice-Admiralty Courts still depending on the rules made in pursuance of the 2 & 3 Will. IV., ch. 51,—and that of the High Court of Admiralty having been greatly simplified and improved by the rules^o

1859, made in pursuance of the Acts of 1840 and 1854, many of which, I think, might be extended with great advantage to the practice of this Court. By the 65th of these rules the modes of pleading theretofore used, as well in causes by Act on petition as by plea and proof, which are still in force here, were abolished; and the 66th substituted one mode of pleading of a very simple and effective kind. The forms also are greatly abbreviated. The fees I have not compared, but I have long thought that the fees in this Court might be largely reduced, with signal advantage to the community as well as to the profession.

If the practice of the two Courts is so widely different, so also, as I think, is the extent of their authority, under the recent legislation. (See the cases in Swabey's Rep. 475—488.)

This is a most interesting inquiry, and while I regret that in conducting it, we have lost the aids of the long experience and professional attainments of the late Judge, it has become my duty, and is essential indeed to a right determination of these suits, to trace it through all its bearings.

In the case of the *Australia*, the Privy Council said in the year 1859, "A Vice-Admiralty Court has no more than the ordinary Admiralty jurisdiction. That jurisdiction is the jurisdiction which was possessed by Courts of Admiralty antecedent to the passing of the Statute which enlarged it in 1840."

With this principle in view, let us look to the 6th section of the Act of 1861, in respect to damages for cargo imported. The first decisions upon this section were in the cases of the *Ironsides*—*Lush*. 458; and the *St. Cloud*, 8 L. T. Rep. 55: where Dr. Lushington points out the necessity and advantage of this remedial clause:

"The short delivery of goods brought to this country in foreign ships, or their delivery in a damaged state, the goods being the property of British merchants, was frequently a grievance—an injury without any practical remedy; for the owners of such vessels being resident abroad, no action could successfully be brought in a British tribunal, and to send the British merchant, who had sustained a loss, to commence a suit before a foreign tribunal, and probably in a distant country, could not be deemed a practical and effectual remedy. And this enactment, therefore, was intended to operate by enabling the party aggrieved to have recourse to the arrest of the ship bringing goods delivered short or damaged in cases where, from the absence of the defendant in foreign parts, the common law tribunals could not afford effectual redress."

The evil here described and remedied, and which was extended somewhat further by the decision in the *Norway*, (10 L. T. Rep. 40,) exists equally, though in a modified degree, in the colonies as in the United Kingdom. Why should not an American or a Spanish ship making short delivery of her goods, or delivering them in a damaged

state at Halifax or Quebec, be subject to the same arrest at the suit of the colonial consignee, as at the suit of the home consignee in London or Liverpool. I look, however, in vain to the Act of 1863, although one of its objects is to extend the jurisdiction of Vice-Admiralty Courts, and in some particulars it does extend it, for any clause resembling the 6th in the Act of 1861; and where the Imperial Legislature has given these colonial courts certain new powers and withheld others, it would be a bold assumption indeed to act upon the powers so withheld, as if they had been given by the very Act that withholds them. I have no doubt, therefore, that the Act of 1861 does not extend *per se* to the Vice-Admiralty Courts.

The question remains, whether the words, "claims for seamen's wages," in the 10th section of the Act of 1863, were intended to cover such claims, when due under a special contract. I confess I should be glad to find that they would; for there is little reason in withholding this power, when the next clause gives the new power to adjudicate upon a master's disbursements. It is strange, however, that the words as to special contract, in the 10th section of the Act of 1861, are not repeated in the 10th section of the Act of 1863; and it is clear that the proviso in the latter section, not having been repealed, does not extend to us. I see that the Judge of the Admiralty has been extremely cautious in exercising jurisdiction under the 10th section of the Act of 1861. In the case of the *Chieftain*, 8 Law T. Rep. 120, the petitioner stated his case as follows:

He stated amongst other things, "that a sum of money was due to the master for wages, that he had 'disbursed various sums, necessary expenses, for and on behalf of the *Chieftain*, and had also become liable in respect of necessities ordered by him and supplied, and in respect of wages due and owing to the crew.'"

"Dr. Lushington (after stating the facts of the case) said:—The simple question for the decision of the Court is, whether or not it has jurisdiction to entertain these claims: the consequences either of allowing or of disregarding them, it is beyond the province of this Court to consider. It must be admitted that, prior to the Admiralty Court Act, 1861, the Court would have had no such jurisdiction, and its powers must therefore be found, if at all, within the 10th section of that Act. [The Court then read the section alluded to.] I am of opinion that there is a manifest distinction between the liability alleged by the plaintiffs, and the meaning of the word 'disbursements,' and as the present claim does not come under the latter denomination it must be disallowed. The decision may perhaps result in a hardship to the master, though if it were necessary to consider that question it should be borne in mind that he has another remedy by personal action against the shipowner. I make no order as to costs."

In the case of the *Edwin*, 10 Law T. Rep. 658, the Judge confirmed

the above case, adding that "with regard to the liability of a master beyond his disbursements—that is, the disbursements he had actually paid,—however hard my decision may be, or with whatever severity it may operate on him, I have no jurisdiction to give a remedy."

In the case of the *Robert Pow*, 9 Law T. Rep. 237, the Judge exercised equal caution in interpreting the 6th section of the Act of 1840, and the 7th section of the Act of 1863, and in these decisions has set me an example which I will do well, I think, to follow. The inclination of my judgment leans strongly against the enlarged construction of the 10th section of the Act of 1863, and consequently against the power of this Court to award seamen's wages due upon a special contract.

It was contended, however, at the argument, that the defendants could not object to the jurisdiction, either on this ground or under the £50 clause in the Act of 1854, because they had filed absolute appearances, and the rule in the Admiralty Courts requires "that should a party appear under protest, either objecting to the jurisdiction of the Court, or on any other ground on which he means to contend, that he is not liable to answer the action, his appearance must be entered as given under protest." Now, there is no doubt that an appearance under protest is a familiar practice in the Admiralty, as appears in *Coote*, 93, 176, and by the cases, in 1 *Dodson*, 234 ; 3 *Hagg.* 364 ; 1 *W. Rob.* 143 ; 2 *W. Rob.* 224 ; 3 *W. Rob.* 109 ; and many others. In a note to *Coote* 93, a dictum of Dr. Lushington is quoted from the *Law Magazine*, "that the question of jurisdiction should always be raised in the first instance, and if it were not, he was of opinion, that it was not properly before the Court." So in the case of the *Blakeney*, *Swabey*, 429, the Judge held that all objections to the jurisdiction must be taken on the earliest occasion ; and the defendant having appeared, and after the release of the ship on bail, having obtained leave to make his appearance under protest, the protest was overruled, "for an absolute appearance once given cannot be re-called." On these authorities I should have been inclined to hold that the appearance of the defendants, not under protest, was a waiver of any objection under the £50 clause in the Act of 1854. But, as it struck me at the argument, it was a very different thing to expect the Court to assume a jurisdiction which it did not at all possess, merely because a defendant had neglected or did not choose to raise the objection in the proper form. This distinction, which appeared to me to rest on principle, is supported I find by the case of the *Bilboa*, 1 *Lush.* 152. It is there said, "that the Court will occasionally consider questions of jurisdiction at the hearing, but always with great reluctance, and only where there might be danger of the Court proceeding without any jurisdiction at all. The Court is necessarily obliged to be careful not to exceed its jurisdiction ; but it will not admit, after absolute appearance, objec-

tions of a purely technical kind." It will be seen, therefore, that where the Court is of opinion, as in the cases now before us, that it has no jurisdiction, it will not only entertain the objection at the hearing, but is bound itself to raise it, as seems to have been the case in *Swabey*, 67.

Of the merits of these cases, I have hitherto said nothing, though they figured largely at the argument. It is of little consequence, indeed, whether the merits are or are not with the plaintiffs, if I have no power to enforce them. I may say, however, that in my opinion, two of the parties, at least, ought to have been paid something more than they got. The claims made to the third sixty or third forty dollars, I look upon under the evidence as untenable. Bailey admits that he received his advance outside ; and Cameron says that he received forty dollars at Halifax. If so, Bailey was entitled to nothing more. To Nichol, if I had the power, I would have assigned the whole, or the greater part of the second sixty ; and Valley, whose evidence that he was to receive three sixties at Halifax, is improbable in itself, and is besides inconsistent with Cameron's ; that a man leaving Wilmington gets only half,—wants thirty dollars of that half. My decree, therefore, would have awarded very small sums, reducing the whole question very nearly to a question of costs. As the plaintiffs have given no security, and have left the province, the defendants in fact, must bear their own costs ; and they will probably think themselves happy in escaping on those terms.

I have given more attention to these cases than their intrinsic importance perhaps deserved ; but this being the first time that I have sat in the Admiralty, I was desirous of informing my own mind and communicating the results of my inquiries to the profession, on the new and somewhat difficult questions that have grown out of this argument. My decree is that the three suits be dismissed, reserving the question of costs for further consideration, should the defendants move me therein, which, as their counsel now assure me, will not be done (a).

(a) See *The Tecumseh*, 3 W. R. 147 ; *The Harriet*, 1 Lush. 291 (21st March, 1861). Also 24 Vict. c. 10, s. 10, *supra*, C.

WAVELET.

15th August, 1867.

The Court of Vice-Admiralty exercises jurisdiction in the case of a vessel injured by collision on the south-east side of George's Island, in the harbour of Halifax, infra corpus comitatus.

Compulsory pilotage, in the English sense of the term, declared not to exist in Nova Scotia.

JUDGMENT.—*Hon. William Young, Chief Justice, sitting as Judge of the Vice-Admiralty Court at Halifax, Nova Scotia.*

This is a case of collision, in which the evidence was taken, with the approval of the Court and by consent of parties, upon the preliminary acts authorised by the rules of 1859, and without further pleadings in the cause. The principles applicable to such cases in the Courts of Admiralty are well settled. In the case of the *Woodrop Sims*, 2 Dods. 83, Lord Stowell states the four possibilities under which collision may occur, and the remedies therefor, some of which are peculiar to this Court, and render its jurisdiction highly beneficial. The party claiming to have full relief must be prepared to show that he himself was not in fault, and that the opposite party is chargeable with negligence, inattention, or want of skill. Where vessels are rightfully pursuing the same track, they must be careful not to molest or crowd upon each other; and where one is astern of the other, the rear vessel must exercise a degree of care to avoid collision, which is not chargeable to the same extent upon the vessel leading. By the rules for preventing collision, issued by the Board of Trade in 1863, art. 17, "Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel."

In the light of these principles, the hearing in this case was had before me, with the aid of a naval officer selected by the Vice-Admiral, and who has reported his opinion on the whole evidence, which I shall presently read and file. To go over the numerous depositions would be a waste of time. I shall content myself with referring to a few passages from those of Britton, McPherson, McDonald, Bouvie, and Murphy, which, in connection with the other parts of the testimony, have led me perfectly to acquiesce in the conclusions of the Assessor, and to pronounce in favour of the Dundee.

(The learned Judge here read certain passages from the evidence, and the following letter from the Assessor :)

“H. M. Ship Gannet,
Halifax, 16th July, 1867.

“SIR,—After having carefully read through the evidence of the several witnesses in the case of collision between the ships Wavelet and Dundee, I have to give it as my opinion, that the ship Wavelet was in fault, under the following circumstances :—

“In not tacking before, which was in her power, as by so doing the collision would have been avoided, which the master, Britton, himself acknowledges in his evidence, likewise George McPherson, mate.

“By the evidence of Matthew McDonald, pilot of the Wavelet, who states the Dundee was within 100 yards of the island when she tacked ; and they were wrong in forcing the Dundee into danger, by making her go so close to the island in the course she was steering—S.W. by W.

“That the Wavelet was wrong in keeping so close to the Dundee, knowing that her bottom was foul, and the wind light and variable, as it is stated the wind veered from south by east to south-west.

“That, instead of the Wavelet tacking when she saw the Dundee do so, she ought to have stood on at least another hundred yards, passing astern of the Dundee, by which means the collision would have been avoided.

“That there was mismanagement on the part of the Wavelet when tacking, in not hauling her after-yards soon enough, by which means she payed off on the starboard tack, and got so much stern way, as Matthew McDonald, the pilot, in his evidence, states, the helm was hard a-port, the main yard braced up, and the crew in the act of bracing up the head yards, when he had to stop them to enable the Wavelet to come to the wind first. If the main yard had been braced up in time, the ship would not have had stern way, and would thereby in a measure have prevented the collision.

“That the Dundee would have been wrong to have attempted to have gone to windward of the Wavelet, is, I think, clearly proved by the evidence of Abraham Bouvie, seaman on board the Wavelet, who states that she would have given them a close shave. This man, I must state, was at the wheel of the Wavelet, on the tack across towards George’s Island, and was hurt during the collision.

“That the Dundee would not have done right in suddenly tacking and anchoring, as, under the circumstances of the case, I am of opinion that the Wavelet had the power in all ways of preventing a collision with the Dundee, by tacking before she did, or putting her helm up when the Dundee tacked.

“That with the wind from south by east, or south, it would have been very imprudent on the part of the master of the Dundee to have anchored so close to George’s Island as he was before he tacked to prevent a collision.

"Taking all the circumstances of the case into consideration, I am of opinion that the Wavelet had all the means in her power of preventing a collision, and the Dundee none, with this exception—that when the Dundee saw the Wavelet was pressing her so much upon George's Island as to endanger the ship's safety, she might have put her helm up, but which proceeding would have retarded her passage to sea, and was one which she was not expected to take under the circumstances.

"I am, Sir,

"Your obedient servant,

(Signed)

"JOHN J. COVEY,

"Navigating Lieut., H.M.S. Gannet.

"The Honorable Chief Justice Young, Halifax."

Pilotage.

McDonald, the witness, being a licensed pilot on board the Wavelet at the time of the collision, and, as may be fairly assumed, having been in charge of the vessel, I directed a re-argument, which was had before me, on the 7th instant, upon this point, as affecting the liability of the owners, and upon another point, which I shall presently refer to. By English enactments, pilotage is sometimes compulsory, and where a pilot is so taken the owner is discharged. There are numerous cases upon this head, and it was desirable to ascertain the true character and effect of our own statute, and the relative position of the Colonial and English shipowner. The General Pilot Act of England, 6 Geo. IV. ch. 125, to which most of the English cases refer, was repealed by the 17th and 18th Vict. ch. 120, having been superseded by the Merchants' Shipping Act of the same year, ch. 104, the fifth part of which, in relation to pilotage, is confined in its operation to the United Kingdom.

Several of the sections, 376, 379, 388, enforce and recognise compulsory pilotage in terms, and in consideration thereof limit the liability of the owner. But no such term or limit is to be found in our Revised Statute, ch. 79. By sec. 8, any unlicensed person, other than the master, taking charge of any vessel as a pilot, shall surrender the guidance thereof, under a penalty of twenty dollars, to the first licensed pilot who shall hail her at certain distances. By the tenth, if the services of the licensed pilot so hailing shall not be accepted, he shall be paid half pilotage by the master. By the eleventh, the master of a vessel, when hailed by a licensed pilot, shall shorten sail, or haul to, so as to facilitate the pilot's boarding, under a penalty of eight dollars. And by the fourteenth, certain advantages are secured to a licensed pilot, who shall have spoken or conducted a vessel inwards, and shall offer his services to pilot her

outwards, when such services are declined. There is no clause in our Act resembling the 55th sec. of the 6 Geo. IV. ch. 125, or the 388th sec. of the Merchants' Shipping Act; and I am of opinion that there is no compulsory pilotage, in the English sense of the term, in this province. The only effect of our Act is to impose certain penalties by the above sections on the master or owner, and the employment of a pilot being voluntary, does not by the law merchant relieve the owner of liability. "In cases of collision, it is no defence to the owners that the ship in fault is under the direction of the pilot, and that the remedy lies against him. They are liable in the first place, and must seek their remedy against the pilot." 1 Bell's Com. 383. "The pilot while on board has the exclusive control of the ship. He is considered as master *pro hac vice*, and if any loss or injury be sustained in the navigation of the vessel while under charge of the pilot, he is answerable as strictly as if he were a common carrier for his defaults, negligence, or unskilfulness, and the owner would also be responsible for the act of the pilot, as being the act of his agent." 3 Kent's Com. 242. See also the cases of the Neptune, 1 Dodson's Reports, 467; the Cumberland and Lord John Russell, Stuart's Vice-Admiralty Reports of Lower Canada, 75, 190, where the doctrine is fully examined by Judge Black. "Compulsory pilotage," said Dr. Lushington (1 Swabey, 217), "is the sole ground of exemption." The principle is, that the pilot is not the servant of the owner, but is forced upon him by Act of Parliament. The compulsion and exemption, therefore, go hand-in-hand. I may add that the same principle is recognised in the case of the Agricola, 2 W. Rob. 19, in the cases cited in 7 L. T. Rep., N.S., 568, 648, and in the Law Reports for 1867, fol. 72,293.

Power of the Court.

The other point that has arisen in this case is much more difficult than the two I have now disposed of. The collision is set out in the preliminary acts, and shown in the evidence, as having occurred on the south-east side of George's Island, Halifax Harbour, and therefore within the body of this county. The defendants put in an absolute appearance; there was neither protest nor declinatory plea. I held, however, in the case of the City of Petersburg, that an objection to the jurisdiction of the Court might be raised for the first time at the hearing, when it rested on substantial, and not on technical, grounds.

In this case it was so raised by the defendant's counsel at the hearing, and the question is whether the Vice-Admiralty Court has jurisdiction under the facts that are in proof. The course of the law in the High Court of Admiralty is abundantly clear. In the early strifes for jurisdiction with the Courts of Common Law, the English Parliament stepped in and declared that the Court of the Admiral

should not meddle with anything, but only things done upon the sea, and should have no manner of cognizance of any contract, or of any other thing done within the body of any county. This was by Statutes 13 Rich. II. ch. 5, 15 Rich. II. ch. 3, and 2 Henry IV. ch. 11; and the law was so recognised in numerous cases, though sometimes complained of as working an injustice. 2 Brown's Civil Law, 111; 3 T. R. 515; 2 Hagg. Adm. Reports, 398. At length, in the year 1840, by the 3 and 4 Vict. ch. 65, sec. 6, the High Court of Admiralty was clothed with jurisdiction among other things, to decide all claims and demands for damages received by any ship or sea-going vessel, whether such ship or vessel may have been within the body of a county or upon the high seas at the time when such damage was received. In the *Bilboa*, 1 Lush. 149, Dr. Lushington said that the plaintiff's counsel had very properly admitted that previous to the passing of 3 and 4 Vict. ch. 65, the Court of Admiralty had no jurisdiction within the body of a county. This appeared from the *Eliza Jane*, 3 Hagg. 335, and other cases; and, indeed, the statute was passed for the express purpose of remedying that and other inconvenient defects. In 1861 another statute, the 24 Vict. ch. 10, was passed to extend the jurisdiction and improve the practice of the High Court of Admiralty, the 7th sec. of which declared that it should have "jurisdiction over any claim for damage done by any ship." In the case of the *Malvina*, 1 Lush. 493, Dr. Lushington speaks of these as most expressive words. The terms "sea-going vessel," and "damage done within the body of a county," he remarks, are not used, and he was glad they were not, for constant confusion had arisen from them; the utmost jurisdiction, nevertheless, was given to the Court in cases of collision. This case went before the Privy Council by appeal (1 Moore's P. C. C. 361, new series), when the jurisdiction as between a steamer and a barge was affirmed, and counsel observed there was great difficulty in ascertaining the meaning of the above section.

It is obvious, however, that its effect was to supplement the 6th sec. of 3 and 4 Vict. ch. 6. The inference that may be drawn therefrom in the Colonial Courts will presently appear.

In the argument of this case, I was reminded of the original jurisdiction of the High Court of Admiralty, as travelling everywhere with the flow of the tide, and comprehending in tidal rivers or *embouchures* of the sea whatever was below the first bridges (*infra primos pontes*), which are effective impediments to free passage to or from the sea; and then I was asked to decide in this case that the ancient statutes of Rich. II. and Henry IV. did not extend to the Colonies. But I should consider well before I adopted so startling a proposition, or claimed for this Court a jurisdiction wider than that of the High Court of Admiralty before the recent statutes.

I see, indeed, from the American cases of *Steele v. Thatcher*

(Ware's Reports, 92), and *De Lovio v. Boit* (2 Gallison, 470), that this wider jurisdiction was claimed and exercised by some of the Colonial Vice-Admiralty Courts before the separation of the United States from the Mother Country, but I know of no authority conferring it upon this Court. In the cases of the *Rajah of Cochin* and the *Australia* (Swabey, 475, 488), in the year 1859, Dr. Lushington said: "I am of opinion, that by statutes, and for other reasons, the Vice-Admiralty Courts in our Colonies, properly constituted, exercise the same jurisdiction as the High Court of Admiralty, with one exception, and that is, when particular powers are conferred upon this Court by name, and not upon the Vice-Admiralty Courts." And, again: "A Vice-Admiralty Court has no more than the ordinary Admiralty jurisdiction. That jurisdiction is the jurisdiction which was possessed by Courts of Admiralty antecedent to the statute which enlarged it."

Now, it is clear that the 3 & 4 Vict. ch. 65 did not extend to the Vice-Admiralty Courts, neither did the statute 24 Vict. ch. 10. But the statute passed in the session of Parliament for 1863, 26 Vict. ch. 24, had for one of its objects to extend the jurisdiction of the Vice-Admiralty Courts as well as to amend their practice. It is under this statute that I sit here, the Chief Justice becoming, on a vacancy, the ex-officio Judge of the Vice-Admiralty, and not under any commission, the issuing of which would be contrary, as the Colonial Secretary declared, to the spirit of the Act. This Act, therefore, inaugurated a new system—it selected judges who may be fairly assumed as the principal judicial officers of each possession to be better fitted for the office than many of the previous appointees, and it confessedly enlarged the powers of the Court. Now, it is remarkable that it gives jurisdiction to the Vice-Admiralty Courts in matters of collision in the very words of the Act of 1861, "over claims for damage done by any ship." These words, in the Act of 1861, gave, as we have seen, a more extended power than the Act of 1840. Are they to give less power in the Act of 1863? Or shall the two statutes, being in *pari materia*, be construed together, and the same interpretation put upon the same words in both? I confess this appears to me the most reasonable, as it is the most convenient and most beneficial construction. I adopt it not without some hesitation, but it will certainly promote the ends of justice, and in this case gives to the *Dundee* the redress to which I think her entitled. It must be noted also that, though the Act of 2 Will. IV. ch. 51, was repealed by the Act of 1863, its spirit must be taken as transfused into that Act, which was purposely made to enlarge the jurisdiction, not to withhold what had been already conceded. At the point below any impediments to a free passage, until we reach the high seas, it recognises a concurrent jurisdiction with the courts of common law, and that law will operate concurrently in this

harbour with the maritime law of nations, as administered in this Court. I must further observe that in the case of the *Royal Arch*, a ship owned in this province, and which was taken into the High Court of Admiralty on a bottomry bond in 1857 (1 *Swabey*, 277), Dr. Lushington made the following remarks, which somewhat qualify those I have previously cited:—"Contracts of bottomry," he says, "made by the owners themselves in this country at the beginning of a voyage, by the terms of which the ship is pledged as a security, cannot be enforced in the Admiralty Court against the ship. In the American Courts probably a wider jurisdiction is conceded. And the Admiralty Courts in our American provinces exercise a fuller jurisdiction than the High Court of Admiralty in England. The reason seems to be, that after the Revolution of 1640 broke out, there was a great jealousy against the Ecclesiastical Courts, and this was extended to the High Court of Admiralty, and so in Lord Holt's time its jurisdiction was curtailed, whereas in our North-American colonies there were no Ecclesiastical Courts to excite any such jealousy, and the jurisdiction of the Admiralty remained on its ancient footing." See also the case of the *Draco*, 2 *Sumner*, 157.

I perceive in *Stuart's Lower Canada Reports*, already cited, p. 383, a case which occurred at Quebec in the year 1823, where the then learned judge arrived at the same conclusion, though from different premises, and maintained the ancient jurisdiction of the Admiralty over the river St. Lawrence, and the present accomplished judge, in the cases of the *Lord John Russell*, p. 190, the *Dahlia*, p. 242, and the *John Munn*, p. 265, exercised the same jurisdiction for injuries done in the port of Quebec, and on the river between Quebec and Montreal.

Now that we are a part of the dominion of Canada, and seated beside the first and most splendid port in that dominion when its facilities, as all of us must hope, and as I firmly believe, will ere long be tasked by a vast accession of new and expanding commerce, and a fruitful tide of navigation, it would hardly be fitting that the law should not expand with the objects of its protection, and afford to shipowners and masters remedies equally effectual as those which are enjoyed at Quebec or Montreal. I do not intend that the Court shall be open to that reproach while I preside in it.

I might feel, indeed, some compunction in extending its powers, were its present voluminous and cumbersome forms and extravagant charges to remain. But I have reason to believe that it will shortly be remodelled, and should the bills now before Parliament, and in which I took a warm interest while in London, receive the royal assent, an improved and simple practice and a moderate tariff will give the Court a new life, and draw to it, I trust, the confidence and the esteem of the community.

In the present case, I pronounce in favour of the Dundee with costs, and direct the usual reference to ascertain the amount.

THE CHASE.

14th August, 1872.

A Court of Admiralty has jurisdiction in a case of damage done to a wharf by a ship under the Imperial Act of 1861, which enacts that the Vice-Admiralty Courts shall have jurisdiction in respect of claims for damage "done by any ship."

Where a vessel was insufficiently moored and in a gale of wind broke from her fastenings and collided with a wharf, her owners held liable for the damage.

JUDGMENT.—*The Hon. Sir William Young, Chief Justice, sitting as Judge of the Vice-Admiralty Court at Halifax, Nova Scotia.*

In this case, on an affidavit of the plaintiff that the Chase had run foul of his wharf at Halifax, and greatly injured it on the 12th October last, a warrant issued in the usual form in cases of collision and bail was put in for the sum of 1000 dollars. The libel was filed on the 5th December, and minutely described the circumstances of the alleged injury, the material allegations being that a gale having arisen while the steamer was discharging cargo at the Dominion Wharf, no steps were taken to secure her safety, although she had no anchors out or steam up, and was imperfectly fastened, as described in the libel; that none of the principal officers were on board, and only two or three of her crew; that it was blowing a violent gale from the south-east, with a very heavy sea running; and in consequence of the careless and improper mooring of the steamer, and there being no one to look after her, the fastening slipped off, and she swung round to the eastward, and headed up the harbour, coming into collision with several wharves in succession, and ultimately with the plaintiff's; that the damage was occasioned solely by the carelessness and neglect of the owners and crew of the said ship or steamer in not mooring her securely and taking proper steps to prevent her drifting; that she drifted up the harbour, bows on, for about four hours, and during the whole of that time no effectual steps were taken to secure her or prevent the damage; that the plaintiff's wharf was strong and in good order, and that the damage done thereto exceeds 800 dollars.

The responsive allegation denies, *seriatim*, all the allegations in the libel, putting the plaintiff upon proof of all, without exception;

a mode of pleading, of which the Court cannot approve, as many of the plaintiff's allegations are indisputable, and the answer should have distinguished which of them were untrue or exaggerated, as many of these allegations are. The answer then avers, that as the storm was seen approaching, the steamer being fastened in the usual way, additional steps were taken to fasten her still more securely, and that she was properly, skilfully, safely, and securely fastened and attached to the wharf where she lay, and the wharf next adjoining to the southward, by hawsers of great strength, and would have there safely remained had not one of the spiles to which she was fastened given way, from the great strain upon it, caused by the heavy seas and hurricane, which bent it over and pulled it from its position; that the steamer thereupon went astern with great force, and the bow fastenings parted, and she went still further astern until she struck the wharf to the north, and then the others, as described; that the master, officers, and crew used every exertion and their utmost skill to get the vessel to swing and prevent her doing damage, and were guilty of no carelessness or negligence whatever; and that the damage was wholly and entirely the result of inevitable accident, and of circumstances which the master and crew could not have foreseen, and over which they had no control. Besides the plaintiff's, five other actions have been brought against the Chase in this Court, depending nearly on the same facts, and involving claims of very large amount. A vast body of evidence has been taken in these suits, and it was agreed by the counsel that the evidence, so taken in any of the suits, might be used in all the others relating to the same question.

The present was heard, as a test case, on the 8th ulto., before me, with the assistance of Captain Nicholson, of H.M. ship *Royal Alfred*, when the whole of the evidence was read, consisting of twenty-eight depositions on behalf of the plaintiff and fifteen for the defendant, and the law and facts of the case were fully and ably argued. No question was raised in the responsive allegation nor at the hearing as to the jurisdiction of the Court; but as several cases bearing upon it were cited and commented on, and this is the first case of the kind in this province, it is necessary shortly to consider the foundation on which it rests.

By the Imperial Act of 1861, 24 Vict., chapter 10, sect. 7, extending the jurisdiction and improving the practice of the High Court of Admiralty, the jurisdiction was given for the first time "over any claim for damage done by any ship," without saying to whom or what such damage may have been done; and these words have led to several decisions in the English Courts which are not yet reconciled to each other.

In the Imperial Act of 1863, 26 Vict., chapter 24, sect. 10, the same jurisdiction is given to the Vice-Admiralty Courts throughout

the empire in respect of claims for damage "done by any ship." The words are identical, and all, or nearly all the cases, apply to us as well as to the home shipowner or merchant. In the case of the *Robert Pow* (a), decided in 1863, the Court decided that under the above section 7, the damage meant damage done by collision, that is, of ship against ship, and did not extend to the case of damage done by a steam-tug to the vessel she was towing, by negligence in towing, if the damage was occasioned, not by collision, but by the vessel towed taking the ground. In the *Uhla*, decided in 1867 (b), it was held that the section conferred jurisdiction for damage done by a ship to the breakwater at Falmouth. "I take it," said Dr. Lushington, "that the section confers jurisdiction over every case of damage done by any ship. I happen to know," he adds, "that this section was inserted on purpose to give jurisdiction in a case like the present. I am perfectly satisfied of this, but was somewhat staggered by the case cited of the *Robert Pow*; but, on looking at it, I find that it does not affect the present case, and that the Court has jurisdiction."

These two cases are cited by the Court of Queen's Bench, in the case of *Smith v. Brown* (c), where it is said, as to the latter, that the damage had been actually done to the breakwater by the ship itself, and the case therefore came within the very words of the Act. This was decided in May, 1871. In the *Industrie*, decided in January, 1871 (d), the *Blue Bell*, in consequence of an unskilful manœuvre of the vessel charged, took the ground, and though her anchor was let go, dragged it and drove against the town wall of Hartlepool, suffering damage, for which the *Industrie* was held liable. "There has no doubt," said Sir Robert Phillimore, "been some fluctuation as to the extent of the jurisdiction of the Court of Admiralty in cases of damage, but I think it is now established that this Court has jurisdiction where damage has been done or received by a ship, although there may not have been any collision between two or more ships."

It is to be noticed that the 6th section of the Imperial Act of 1840, 3 & 4 Vict. ch. 65, giving jurisdiction to the High Court of Admiralty, among other things, over "damage received by any ship or sea-going vessel," has not been extended in terms to the Vice-Admiralty Courts. A class of cases has also arisen in England, one or two of which were cited at the argument, on claims under section 6 of the Act of 1861, for personal injuries.

The jurisdiction of the High Court of Admiralty over such claims, by virtue of Lord Campbell's Act, has been asserted by that Court, and affirmed by the Committee of the Privy Council, the highest

(a) *Browning & Lushington*, 99.

(b) 19 L. T. R. 579; 2 L. R. Admiralty, 29.

(c) 25 L. T. R. 814.

(d) 24 L. T. R. 446.

Court known to us, but questioned by the Court of Queen's Bench, on a writ of prohibition, in the case of *Smith v. Brown*, already cited, where the cases of the *Sylph*, the *Guld-faxa*, and the *Beta*, are reviewed. Whatever may be the ultimate decision on this point, the jurisdiction in the case we are now dealing with seems abundantly clear, and we have now to inquire whether the principles of law bearing upon the facts in proof will bring the defendant within it.

There is no question that the plaintiff and the other promovents in the suits against the Chase have suffered serious losses, and are themselves free from blame, though their wharves may not, in all cases, have been as strong or as sound as they ought, and their claims may, in some instances, be exaggerated, or attributable to the storm rather than to the Chase. These are subordinate inquiries. The fact remains that but little, if any, contributory negligence is imputable to the complainants, and that heavy losses have been incurred, the liability for which depends upon the main issue. Were these losses attributable to the act of God, to inevitable accident, as set up by the defendant, or, as alleged by the plaintiff to the want of due care and precaution, and of adequate skill on the part of the Chase, for which the law will hold her owners responsible? Many cases were cited on the subject of inevitable accident and of negligence, and they are very numerous in the books, and establish principles that I look upon as well settled. I shall content myself, therefore, with referring to a few of the leading and more recent authorities in England and the United States.

In the *Marpesia*, decided on appeal by the Privy Council in February last (a), the Court said: "It was suggested by counsel, that on the ground of inevitable accident there is some difference of opinion between the Court of Admiralty and the courts of common law." Their lordships, however, cannot find that there is any such difference. They take the law as they find it laid down by Dr. Lushington, in two cases. In the case of the *Bolivia* (b), Dr. Lushington says: "With regard to inevitable accident, the *onus* lies on those who bring a complaint against a vessel, and who seek to be indemnified. On them is the *onus* of proving that the blame does attach upon the vessel proceeded against. The *onus* of proving inevitable accident does not necessarily attach to that vessel; it is only necessary when you show a *prima facie* case of negligence, and want of due seamanship." Again, in case of the *Virgil* (c), the same learned judge gives this definition of inevitable accident: "In my apprehension an inevitable accident, in point of law, is this, viz.—That which the party charged could not possibly

(a) 26 L. T. R. 333.

(b) 3 Notes of Cases, 208.

c) 2 W. Rob. 205.

prevent by the exercise of ordinary care, caution, and maritime skill. If a vessel, charged with having occasioned a collision, should be sailing at the rate of eight or nine knots an hour, when she ought to have proceeded only at the rate of three or four, it will be no valid excuse for the master to aver that he could not have prevented the accident at the moment it occurred. If he could have used measures of precaution, that would have rendered the accident less probable." "Here we have to satisfy ourselves," said their lordships in the *Marpesia*, "that something was done, or omitted to be done, which a person exercising ordinary care and caution and maritime skill in the circumstances, either would not have done, or left undone, as the case may be." These principles have been followed by the District Courts of the United States, and were recognised by the Irish Court of Admiralty in the case of the *Secret*, decided last May (a). Townsend, J., said he could not do better than adopt the language of Dr. Lushington in the *Europa* and other cases, and as the head note expresses it, inevitable accident is where the collision could not have been prevented by proper care and seamanship in the particular circumstances of the case. The cases as to negligence and the *onus probandi* proceed upon the same principles. In *Morgan v. Sim*. (b), Lord Wensleydale said: "In a case of collision, the party seeking to recover compensation for damage must make out that the party against whom he complains was in the wrong. The burden of proof is clearly upon him, and he must show that the loss is to be attributed to the negligence of the opposite party. If at the end he leaves the case in even scales, and does not satisfy the Court that it was occasioned by the negligence or default of the other party, he cannot succeed."

It will be observed in these decisions that the words "ordinary care," "precaution," "the circumstances of the case," perpetually recur. They are the key notes of the rule. Extraordinary and unexpected cases, which a prudent and thoughtful man could not have foreseen and was not bound to guard against, are not within the rule. Thus, in *Blyth v. Birmingham Waterworks* (c), where the defendants' fire-plugs were constructed under the Act of Parliament, but gave way under the severe frost of 1855, which penetrated to a greater depth than any which ordinarily occurs south of the Polar regions, it was held that the company were not answerable for the consequences. They had acted according to the circumstances of the temperature in ordinary years, and the law would not charge them with negligence. But where emergencies occur, and a vessel is exposed to tempestuous weather, or placed in a critical position, the master must be equal to the occasion, and must adopt, on the instant

(a) 26 L. T. R. 670

(b) 11 Moo. P. C. R. 311.

(c) 11 Exch. 781.

such measures as adequate skill and seamanship prescribe for his own safety and that of others. "Darkness and thick weather can only be an excuse in collision for those who have exercised such additional caution as prudence and the circumstances required (a)." In the *Thomas Powell v. The Cuba* (b), the latter was held liable for the collision, though it was a very tempestuous night and the wind blowing with severity. And in *Seacombe v. Wood* (c), where the vessel had received an injury and been rendered unmanageable by the negligence of the defendant's master and crew, her being in that state was held no defence to a subsequent collision.

In the case in hand no negligence can be imputed before the tempest arose. The *Chase* was fastened to the wharf as she had always been, and as usage had shown to be amply sufficient under ordinary circumstances. She was discharging her cargo, her boiler being rinsed out and her steam managed as usual; the master absent for a short time, as he had a right to be; the other officers and crew on board. The hawsers and equipments of the ship were in good order. No accident had happened to her or her companion ships at the wharf for some years. But the tempest came on with unexampled violence and it was obvious that additional fastenings were necessary. They were in fact put out and the principal one secured to a spile on the south-east corner of the Dominion Wharf. The first and most material question therefore is, Were the fastenings after the storm such as a prudent master, of competent skill and vigilance, ought to have used and been content with, looking to the position of his vessel and the appliances within his reach? And the steamer having broken adrift, by this principal spile giving way, the second question is, was she then handled in a seamanlike manner, and every reasonable effort made to avert the damage that was done? The first of these questions is one of which any intelligent man can judge after listening to the evidence, and, above all, after inspecting the premises. The second requires nautical skill, and belongs more to the assessor than to the Court, though the judge, according to the doctrine in the *Magna Charta* (d), has still the responsibility of drawing a judicial conclusion. It is not my intention to wade through the statements in the numerous depositions, which are often mere repetitions of each other, and would extend this judgment to an inordinate length. I shall content myself with reviewing them in their leading features and inquiring first of all into the character of the storm. Three or four of the witnesses for the plaintiff are disposed to depreciate it; but the great body of them, including some of the promovents, unite in describing it as one of the heaviest gales accompanied by the worst sea that had been seen in this

(a) *Machlachlan on Shipping*, 280.

(c) *Moo. & Rob.* 290.

(b) 14 L. T. R. 603.

(d) 25 L. T. R. 573.

harbour for many years. Reyno says, "I have been about Halifax Harbour all my life, in large and small vessels, and never saw a gale come up so quick, there was no warning; it was the highest tide and sea that I ever saw in the harbour. I did not think there was going to be such a gale; but when it came on I put out extra fasts to secure my vessel." Captain J. T. Wood says: "This was a whole gale, the worst I ever saw in Halifax Harbour; there was a very heavy sea in this harbour, the worst I ever saw here." Mr. Allison, the meteorologist, watched the progress of the gale and testified—"that it obtained a velocity of sixty-six miles per hour; thirty miles an hour is a gale of wind; sixteen miles is a good strong breeze; and this gale, at its height, was extraordinary; the highest we have had since 1870, such a gale as probably only happens once in an autumn; this was a cyclone; at noon the barometer stood at 29·823, at 3 P.M. it stood 29·585; this I call falling rapidly; at six o'clock it was 29·036; and at seven o'clock it was 28·933; and after that it rose." Several wharves were injured by the storm; and fish was rolled off them for fear of it. Jost says: "The Market Wharf was torn to pieces up to the fish market evidently by the sea and tide. The tide had been higher between the Market Wharf and the Steamboat Wharf than I ever saw it before. The slip between Market Wharf and Steamboat Wharf, that had been there for many years, had been destroyed by the gale. The platforms in front of the City Building at that point were torn up by the action of the sea and gale. The fish-market slip was torn up by the sea." McKay says: "The sea was washing clear over all the wharves; Boak's Wharf was clean stripped, with the exception of a few planks from the end of the wharf up to the store. I observed this partly that night and partly next morning. I noticed next morning that the plank was torn up on the wharves between Boak's and the Dominion Wharf by the sea, independent of the Chase. Before the Chase struck Lawson's Wharf I considered it dangerous to go down on it, or on Boak's. I think, however, if the Chase had not struck the wharves, there would have been no greater damage than the tearing up of the planks." According to Smith: "Pryor's Wharf went down by the storm and tide. It was a pretty good wharf—as good as the wharves around. A large portion was carried away." All the above is from the plaintiff's depositions; and it is confirmed by Morrison, the chief engineer of the Chase, who says he never saw a worse gale, except at St. Thomas, during the time of the tidal wave and earthquake.

Such being the storm to be encountered, what were the precautions taken by the officers of the Chase? The evidence, I think, clearly shows that, having arrived at eleven o'clock, and the first indications of the storm having become observable between two or three, she could not be expected to have steam up or anchors down. There is no fault imputable to her till the gale was approaching its height.

Then the extra fastenings were out, and no doubt the master and principal officers (all of whom have been examined) believed they were sufficient. It is hard to impute to these men, having a valuable, uninsured ship in charge, with the advantages of long experience, a want either of vigilance or of skill. They describe minutely the fastenings they employed, and it would be a waste of time to describe them here ; they appear on the diagram. But I cannot help thinking, after a careful and deliberate review of the evidence, that there was an error in judgment in trusting to one spile. Baldwin's evidence and my own inspection show that there was a second spile on the south side of Dominion Wharf, which was not used. A line to the spile on the north side of Dominion Wharf, according to Steele, would have been of no service, for the reason he assigns ; but this cannot be said of the spile on the south side. It is admitted that the cause of the Chase breaking away was the slanting of the spile on the south-east end of the Dominion Wharf, to which she had made fast. Wilcox says : " I think the Chase's fasts were sufficient to keep her to the wharf, if that spile had not given way. The whole of our fasts on the Dominion Wharf, including the extra ones, were fastened to one spile, having taken the fast that was on the spile near the shed and put it to the spile on the wharf south (that is on Miller's Wharf). We depended most on the spile on Dominion Wharf which first gave way. The spile gave way from one to one and a half hours after the fasts were made to it." During this time it must be recollected the violence of the storm was increasing. It rose to its height, Mr. Allison thinks, between six and seven o'clock, and to a vigilant looker-on might have suggested, one would think, the wisdom of strengthening the fastenings both to the Dominion Wharf and Miller's. Captain Mulligan, whose deposition is very full and minute, admits that he depended on the south spile on the Dominion Wharf as the main or principal fastening of the ship, and unhappily it failed. I have no doubt, notwithstanding the allegations of the libel, and the declarations of three or four of the witnesses for the plaintiff that the captain, the chief engineer, and the other officers of the ship were on board and exerted themselves to the utmost, after she broke away, to avert the damage. The anchors were dropped at the same instant with the breaking away, or instantly after. Steam was not up and could not be till all the damage had been done ; and the only question about the point that I see was the paying out of only twenty or twenty-five fathoms of chain when a larger quantity would have been more judicious.

Since the hearing, Captain Nicholson has gone over the evidence as well as myself, and has recorded his conclusions in a letter to me which I will now read and put on file.

Opinion of H. F. NICHOLSON, R.N., acting as Nautical Assessor in the affair of the steam vessel Chase.

"H.M.S. Royal Alfred,

"HALIFAX, July 24, 1872.

"SIR,—I have the honour to report to you the opinions I have formed when acting in the above capacity in an action tried before you in the Admiralty Court at Halifax on the 8th and 9th of the present month.

"Having very carefully listened to the evidence and arguments adduced, and having, in conjunction with yourself (at the instance of counsel), visited the Dominion Wharf, to which the steamer Chase was moored at the time in question, I have been able to arrive at the following conclusions :—

"1st. That the gale which raged at Halifax on the evening of the 12th October, 1871, was one of most unusual violence.

"2nd. That no seaman, taking ordinary precaution, could have anticipated such a violent storm, as nearly the only indication of its approach was the falling of the barometer ; other indications, such as a ground-swell setting in heavy masses of angry-looking clouds and fast-flying scud, &c. being wanting.

"3rd. That under these circumstances it was not incumbent on the master of the Chase to close his boilers and get up steam.

"4th. That the steamer Chase was improperly secured to the Dominion Wharf, inasmuch as only one spile was used, while several were available. If ordinary seamanlike precautions had been taken, I believe there was every chance of the Chase riding the gale out safely. I am of opinion that the hawser, which was taken from the starboard bow to a spile on a wharf south of the Dominion, might have been doubled or trebled with great advantage ; that a heavy spring should have been put on from the starboard quarter to a spile on the north edge of the south pier of the Dominion Wharf, and that the breast-fast from the starboard bow should have been taken to the spile situated further up the wharf.

"5th. That after the Chase broke adrift, the anchors were promptly let go, and that no other steps to prevent damage could have been taken by the master of the Chase.

"6th. That when it became apparent that the ship was dragging her anchors, more chain should have been allowed to veer. The testimony of the witnesses proves that between 25 and 30 fathoms were veered. If this quantity had been very much increased (say to from 70 or 80 fathoms), I believe that the Chase's chance of bringing up would have been a very good one.

"Two other points very much less material than the foregoing have been raised by counsel. It may be as well for me to express my opinion on them.

"The counsel for the plaintiff urged that if steam had been used a portion of the strain might have been taken off the securing hawsers, and the ship's chance of successfully riding out the gale increased. I am of opinion that a surer means of snapping the hawsers could not have been adopted. The effect of such a procedure would have been to bring jerks on the hawsers. The counsel for the defendant argued that steam would have been of no use, because against such a storm the Chase could not have steamed; but, admitting that she could not have steamed head on to such a gale, she still undoubtedly could have steamed out to the eastward after the hawsers parted, and her head paid off from the wharf, and having done so, she could have anchored to leeward of St. George's Island with every prospect of being able to ride out the gale.

"I have the honour to be, Sir,

"Your very obedient servant,

(Signed)

"H. F. NICHOLSON,

"Capt. H.M.S. Royal Alfred.

"To the Hon. the Chief Justice of
N. Scotia, Halifax."

I pronounce the Chase liable with costs for the damage done by striking the plaintiff's wharf, such damage to be ascertained by referees, according to the practice of the High Court of Admiralty and of this Court under the rules sanctioned by the Crown in the year 1832.

THE THREE SISTERS.

27th October, 1873.

The Ports of the Dominion of Canada are to be accounted Home Ports in relation to each other, and a bottomry bond given on a Dominion vessel in a Dominion Port cannot be enforced by the holder within the jurisdiction of the Admiralty.

Costs against the holder not allowed.—Salvage and wages awarded.

JUDGMENT.—*Sir William Young, Chief Justice, sitting as Judge of the Vice Admiralty Court, at Halifax, Nova Scotia.*

This case comprehends a variety of questions to be dealt with in their order. The first step was a warrant issued by Mr. G. R. Frith on the 21st of June, as the holder of a bottomry bond for \$1900 with 10 per cent. interest, dated at Halifax 24th February last, and executed by the master with the written assent of Mr. G. F. Downs, the

registered owner. This was followed up by an appearance on behalf of Mr. G. B. Hall, a mortgagee claiming priority of the bond, the mortgage bearing date the 20th August, 1872, for the sum of \$1800, and being recorded on the 21st at Quebec, where the vessel is registered. Then came claims for wages by the master, mate, and four of the seamen, and lastly a claim of salvage, the vessel having been driven from her moorings in this harbour, in the storm of 24th August.

Of these questions that of the bottomry bond is by far the most important, both in its effect on the parties in this suit, and as involving a point new in this Dominion.

Mr. Frith having gone into the Insolvent Court, I required his assignee to intervene under the Act of 1869, which he accordingly did and became the promovent in this suit on the 1st September.

It was then agreed by the proctors of the assignee and mortgagee to waive any pleadings or evidence, substituting therefor a cause setting out the facts, which was argued before me on the 18th of September, and the other claims having been argued on the 18th inst. and fully considered, I am now to give judgment.

The case which is concisely and well drawn, is as follows :

"In December, 1872, the brigantine *Three Sisters*, of Quebec, of which one George Fallan Downs was the sole owner, and one Marmaduke Graburn, the master, sailed under a charter party from the port of Halifax, bound to Cow Bay, C. B. Whilst in the prosecution of this voyage she encountered heavy gales and was obliged to put back to Halifax, having been very much injured in her hull and rigging, and nearly all her ship's stores and provisions being exhausted in consequence of her having been at sea for 43 days. On her arrival at Halifax a survey was held upon her, and she was found to be totally unfit to proceed on any voyage without being first refitted, repaired, and revictualled. Upon the report of such survey being made, the *Three Sisters* being at that time under penalties to complete her voyage, and the master and owner (who had accompanied the ship on her attempted voyage to Cow Bay, and on her return to Halifax), being unable to procure funds to put the said vessel in a condition to proceed on her voyage, one Gilbert R. Frith, (the bottomry bond-holder in this suit,) under an agreement for a bottomry bond, advanced the sum of \$1000.00 for the purpose of putting her in such condition. Subsequently to this advance being made, and after it had been expended on the ship, the charter party was mutually rescinded. The sum of \$1000.00 being then found to be perfectly inadequate, and neither the master or owner being able to procure the additional necessary funds, Frith agreed to advance a further sum not exceeding \$900.00 to be joined with the said \$1000.00 in a bottomry bond, for a new voyage, at a premium of \$10.00 per cent. The bond (which is the one referred to in this suit)

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was given to Frith by the master with the written consent of the owner. With the exception of a sum paid for wages on the attempted voyage to Cow Bay, the advance of nineteen hundred dollars was actually made for sails, repairs, and other necessities, without which it was impossible for the Three Sisters to go to sea with any reasonable hope of safety. Mr. Frith was not aware, until after he had taken action on the bond, that any one held a mortgage on the ship, but had been given to understand by the owner at the time the bond was given, that there was no incumbrance on the Three Sisters. That previously to the said agreement being made and the bond executed, the said brigantine, Three Sisters, had been mortgaged to one George B. Hall, of Quebec, for the sum of \$1800.00, by a mortgage bearing date the 20th day of August, 1872, and which was registered on the 21st day of August, 1872, at Quebec, aforesaid, to which port the said brigantine belonged. The amount secured under the said mortgage is still due and unpaid to the said George B. Hall.

The subject for argument—the validity of the bond.”

I have to add that, having inspected the certificate of registry, I find that, according to the practice and rule at the Customs, the mortgage was not endorsed thereon, and it appears by the case (to which the owner, however, is not a party to speak for himself), that he misled Mr. Frith, by giving him to understand that there was no incumbrance on the vessel. A telegram to Quebec, to ascertain the fact, would have been the most prudent course, as it turns out that his confidence was misplaced, and that either he, or, rather that either his creditors or the mortgagee are to suffer. No question has been raised before the Court, on the form of the bond, the purposes to which the money was applied, nor the premium, in none of which, as I think, nor in the good faith of the lender, is it assailable. It is true that the advances were made for a new voyage, and that something might have been said on the necessity of so large an advance, which amounted, as appears by Mr. Downs' memorandum annexed to the bond, to \$2190, exceeding by \$290 the amount in the bond. But all this was done under the eye and with the approval of the owner, whose bond in fact it is, and it would not lie in his mouth to question it. But here we have a *bond fide* mortgagee, to whom no notice is given,—nor is any notice required, if the bond be valid—raising the main question whether such a bond is legally binding, given on a Dominion vessel, in a Dominion port. The leading case, insisted on by both parties at the hearing, and cited in all the text books, is that of the Royal Arch, Swabey's Rep. 269, decided by Dr. Lushington, in 1857. That vessel was owned in Nova Scotia, and it was held that a bottomry given by the master, with the assent of one of the owners, in New York, was good, and that a mortgage would have been postponed to the bond, had not the time been extended by a subsequent instrument, of which no precedent could

be found. But this decision was founded upon the fact that New York was a foreign port. "It is true," said Dr. Lushington, "that New York is not distant from Nova Scotia, but though distance may be all-important where the consent of the owner has not been obtained, yet I do not think such reasoning applies to cases where such consent has been given." "Upon the best consideration I can give this question," he added, "and assuming the ordinary requisites, such as want of credit, necessity, &c., to exist, I think that such a bond would be valid against the owners, and might be sued on in this Court." Then he takes the distinction, which he had previously noted, between such a bond, and a bond granted by the owner himself in his own country (or by the master, I would add, with the assent of the owner), before the voyage commences. "It appears to me," he says, "that under all ordinary circumstances, it is not competent to the master, with the consent of the owner, to grant a valid bottomry bond upon a British ship lying in a British port, for a new voyage, such bond to be suable in this Court." He then gives his reasons, the first and most material of which is, because such a bond would create, if valid, what may be termed a secret lien on the ship, without what the law would consider necessity, and the consequence would be that subsequent (and, I might add *a fortiori*, preceding) mortgagees might be injuriously affected." This doctrine is affirmed by the judge in the case of the *Heligoland*, Swabey, 495, in 1859, where he says, "I think that the authorities show that if the owner of a British ship in England were to raise money upon a bottomry bond for any voyage whatever, the bond holder could not sue in the Admiralty Court." Both these decisions, it will be observed, proceed upon the restricted jurisdiction of the High Court of Admiralty, which the Imperial Act of 1861 (the 24 Vict. c. 10), though it has largely extended the jurisdiction on other heads, has not extended on this. In the American Courts, probably, said Dr. Lushington, a wider jurisdiction is conceded, and he cites the leading case of the *Draco*, before Judge Story (2 Sumner, 157), where the validity of a bottomry bond by the owner in the home port is upheld. I may add that the American Courts are much divided on this question, as appears by the note in 1 Parson's on Shipping and Admiralty, fol. 133—42; 1 Conkling's Admiralty, 275. Beside the intimation of the Supreme Court of the United States in (*Blaine v. The Charles Carter*, 4 Cranch, 328), there are many cases supporting the view that there is no jurisdiction in Admiralty on a hypothecation by the owner in the home port. And notwithstanding the high authority of Judge Story, and the Irish case, in (2 Browne Civ. and Adm. Law App. 530), my own opinion leans strongly to that side. It was supposed at one time, and the Royal Arch rather favours that view, that the Courts of Vice-Admiralty from their position and the absence of Ecclesiastical Courts, were clothed with a fuller juris-

diction than the High Court of Admiralty in England. This question I examined at large in the first decision I pronounced here, in the case of the City of Petersburg in 1865, reported in (1 Oldright, 822), and the notion, if it ever had a foundation, is completely dissipated, I think, by the decision of the Privy Council in the case of the Australian (Swabey, 488, and the Imperial Act of 1863, the 26 Vict. c. 24), which authoritatively defines the jurisdiction of all Vice-Admiralty Courts. The Statute limits as well as defines it, and in some cases, as I have had frequent occasion to remark, to the manifest injury of the Colonies. Why, for instance, as I observed in 1865, should not an American or a Spanish ship, making short delivery of her goods, or delivering them in a damaged state, at Halifax or Quebec, be subject to the same arrest at the suit of the colonial assignee, as at the suit of the home consignee in London or Liverpool? The English merchant has a complete remedy *in rem*. The colonial merchant only a remedy *in personam*, which, in nine cases out of ten, is a mockery. Why under the 10th section of the Act of 1863, sub-sec. 9, should not the same power of ordering a sale be conceded as under the 8th section of the Act of 1861, and the want of which power defeated a suitor in this Court of his right in the "W. E. Wier," a case of possession, in the present year. And turning from jurisdiction to practice, why should the cumbersome and expensive forms of the year 1832, with some few improvements, continue in force, when so admirable a code has been in use in the High Court of Admiralty since the year 1859?

As my present judgment will naturally attract some attention throughout the Provinces, I embrace this opportunity of inviting the attention of the legislatures of the Mother Country and of the Dominion, and of mercantile bodies therein to these inquiries, which, as my experience has shown me, very much affect their interests. Taking the law as it is, it is obvious that the validity of this bottomry bond depends upon the relation in which Halifax stands, whether as a foreign or a home port, to a ship owner in the Province of Quebec. If a foreign port, the bond is valid; if a home port, it must be rejected. This is an inquiry of real value, and as is apparent from its application to any province in the Dominion, of much practical importance. A bottomry bond, to be enforced in the Admiralty, and to take precedence of incumbrances on the registry executed within the province to which the ship belongs, is of no avail. This bottomry bond, executed at Montreal or at Gaspe, would be valueless in the Admiralty. Shall it be good then, when executed at Toronto, at Charlottetown, or at Halifax? Let us look, first of all, at the English cases and legislation. In the case of (*Menetone v. Gibbons*, 3 Term. R. 267), an hypothecation bond of a British ship executed at Cork, in Ireland, in the year 1782, was held to be good, "being executed in foreign parts in the course of the voyage." In

the case of the *Barbara* (4 Ch. Rob. 1), counsel said that Jersey for the purpose of sustaining bottomry bonds, might be considered as a foreign possession, to which the Court of Admiralty assented. In the *Rhadamanthe*, however (Dodson, 201), in 1813, Lord Stowell expressed a doubt of Cork being a foreign port since the Union. And now by Imperial Act of 1856 (the 19 & 20 Vict. c. 97, s. 8), "In relation to the rights and remedies of persons having claims for repairs done to, or supplies furnished to or for ships, every port within the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to them, being parts of the Dominion of Her Majesty, shall be deemed a home port."

In construing the Dominion Act of 1867, by which the Provinces of Canada, Nova Scotia, and New Brunswick, are welded into one, I should have had great difficulty in holding that the numerous ports of these provinces, with a uniform customs, law, and tariff, were to be treated in relation to each other as foreign. If so, a bottomry bond of a Quebec ship granted at Halifax, upon the principle in the *Rhadamanthe* already cited, would take precedence of a previous bottomry bond duly granted at a foreign port. But any question that might have arisen under the Dominion Act has been resolved by the Merchant Shipping Colonial Act of 1869, the third section of which provides that in the construction of the "Merchant Shipping Act of 1854," and of the Acts amending the same, Canada shall be deemed to be one British possession. On the strength of this Act, as well as of the other, I am of opinion that all the ports of the Dominion are to be accounted home ports in relation to each other, and therefore that this bottomry bond cannot be enforced in the Admiralty.

Next as to the claim for salvage. This comes before the Court clouded with a suspicion of which I have not been able to divest myself. The vessel having been arrested on the 21st and the warrant returned on the 26th of June, remained in charge of the late acting marshal, waiting the expiration of the two months, when according to the practice of the Court the parties cited could be pronounced in default, and the promovent have a decree for the amount of his demand on the bottomry bond. At or just before the expiration of that time, the mortgagee appeared by his proctor, and on the 1st of September, after hearing both parties, I ordered a sale, which was held on the 13th, and produced the net sum of \$1497.74, now in the registry. On the 4th of August the men employed by the then marshal had left the vessel in the stream with only the port anchor down; and in the storm which arose on that day she drifted down the harbour with no one on board, no sail set, and the starboard anchor hanging to the bow. Five affidavits were read at the hearing, and I do not intend to go into them minutely. Two of these were made by Farrell and Campbell, who saw the vessel dragging—she

kedged as she was going down. About 7 o'clock Farrell saw her bring up between George's Island and Wiswell's Wharf, and then heading N. by E. and riding at her anchor. The last time he saw her was about 8 o'clock, when she was between Moren's Wharf and the Gas Works, he could not say she was then dragging. Campbell saw her between 7 and 8 o'clock, abreast or slightly south of the Gas Works, she was then swinging head to wind. These two affidavits produced by the salvors are quite reconcilable with Mr. Hugh McD. Henry's, produced on the defence, which it is quite impossible to reconcile with the salvors. Mr. Henry, standing on the Lumber Yard Wharf, between 6 and 7 o'clock, saw the vessel driving past the wharf by the violence of the gale, and apparently dragging her anchor. When she had drifted a short distance beyond the wharf, her course was arrested, and she rode safely at her anchor, and was so riding, notwithstanding the great violence of the wind, at the time when he last saw her, nearly one hour after her course had been so arrested. Next morning between 9 and 10 o'clock he saw the vessel in the same spot as nearly as he could judge,—he felt sure in the morning that she had not changed during the night. Now, I attach great importance to this evidence coming from a disinterested and competent witness. That he speaks of the same vessel, and that the vessel was then riding safely at anchor, as he describes her, I can have no doubt. That the two McLennans, who claim as for a meritorious salvage, went on board and let go the other anchor, I believe; but that after their own vessel ran ashore, they went out in their own boat from Steele's Pond between 2 and 3 o'clock in the morning, only two hours before the lull of the storm, and boarded the vessel, then dragging, and saved her from going ashore, I regret to say I do not believe. They have magnified a comparatively slight, into a substantial service, and I would be justified, perhaps, in rejecting their claim altogether, as I did in the somewhat similar case of the *Lusteria*, also in this harbour. This, however, I shall not do, and as some service was rendered, I award them \$25 each.

I have now to consider the several claims for wages, and first of all that of Marmaduke Graburn, the master. I allowed him to intervene, 15th September, on the petition of his proctor, claiming a balance of \$267, and the affidavit of his agent stating it at \$250, verifying also two memoranda said to be signed by Mr. Downs, one giving the date when he took charge and the rate of wages at \$50 per month, and the other charging him with payments at Halifax and Trinidad, amounting to \$300. Siteman and Gastonsay, who were examined orally at the hearing, proved Graburn's employment as master, since the 1st of December or January, making a little over six months to the date of arrest. They failed in proving the handwriting of Downs to the Memo., and as Graburn has been unable to come here and testify for himself, there is really no evi-

dence of the \$250, his counsel here claims, being due. He is also charged with considerable sums in an account from Trinidad under his hand, and by an affidavit of Mr. Frith, which the Court has no means of investigating, and must, therefore, reject this claim, leaving the master to his recourse on the owner. The claim also of Charles P. Johnson, the mate is not strictly proved, but as the ship was arrested on his affidavit previous to her arrest by the bottomry holder, and the latter paid the amount with costs, amounting to \$180.79, I shall allow him that sum. In the *W. F. Safford* (Lush. Adm. 69), a person who had paid the crew their wages by direction of the master was allowed to stand in their place, and his claim was given preference over a bottomry bond. On that principle I shall allow the wages paid by Mr. Frith to Hanlon, Brown, and Ashford, amounting to \$172.50. I allow also the wages proved to be due to Joseph Power being \$47.25.

As regards the costs in this suit, I cannot of course award costs to the bottomry holder, but I do not award costs against him. I allow his proctor costs on his resistance to the claims of the salvors and master, which I compute and settle at \$35. To the proctor I allow as costs \$25, in the award to the salvors. These sums with the costs of Court are to be paid out of the proceeds in the registry, and the balance to the proctor of the mortgagees.

J. Harvey Frith, Proctor of the Promovent.

C. B. Bullock, Proctor of George B. Hall the mortgagees.

R.

LETTERS PATENT APPOINTING JUDGE.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To our well-beloved George Okill Stuart, Esquire, GREETING, we do by these presents make, ordain, nominate, and appoint you, the said George Okill Stuart, to be our Commissary in our Vice-Admiralty Court at the City of Quebec in the Province of Quebec in Canada (in the vacancy caused by death of the Honourable Henry Black) and territories thereunto belonging. And we do hereby grant unto you full power to take cognizance of and proceed in all causes, civil and maritime, and in complaints, contracts, offences or suspected offences, crimes, pleas, debts, exchanges, policies of assurance, accounts, charter parties, agreements, bills of lading of ships, and all matters and contracts which in any manner whatsoever relate to freight due for ships hired and let out, transport money or maritime usury, otherwise bottomry, or which do anywise concern suits, trespasses,

injuries, extortions, demands, and affairs civil and maritime whatsoever between merchants, or between owners and proprietors of ships or other vessels, and merchants or other persons whomsoever with such owners and proprietors of ships and all other vessels whatsoever employed or used, or between any other persons howsoever had, begun, made, or contracted for any matter, cause, or thing, business or injury whatsoever done or to be done, as well in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever within the ebbing and flowing of the sea and high-water mark, as upon any of the shores or banks adjoining to them or either of them, together with all and singular their incidents, emergents, dependents, annexed and connexed causes whatsoever, and such causes, complaints, contracts, and other the premises above said, or any of them, howsoever the same may happen to arise, be contracted, had, or done, to hear and determine according to the civil and maritime laws and customs of the High Court of our Admiralty of England, in our said province, and maritime parts of the same and thereto adjacent, whatsoever, and also with power to sit and hold Courts in any cities, towns, and places in our said province, for the hearing and determining of all such causes and businesses, together with all and singular their incidents, emergents, dependents, annexed and connexed causes whatsoever, and to proceed judicially and according to law in administering justice therein; AND MOREOVER to compel witnesses, in case they withdraw themselves for interest, fear, favour, or ill-will, or any other cause whatsoever, to give evidence to the truth in all and every the causes above-mentioned, according to the exigencies of the law; AND FURTHER, to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use as at the instance of any parties, for agreements or debts, and other causes and businesses whatsoever, and to put the same in execution, and to cause and command them to be executed, and duly to search and inquire of and concerning all goods of traitors, pirates, manslaughterers, felons, fugitives, and felons of themselves, and concerning the bodies of persons drowned, killed, or by any other means coming to their death in the sea, or in any ports, rivers, public streams, or creeks, and places overflowed, and also concerning mahem happening in the aforesaid places, and engines, toils, and nets prohibited and unlawful, and the occupiers thereof; AND MOREOVER concerning fishes royal—namely, whales, riggs, grampuses, dolphins, sturgeons, porpuses, and all other fishes whatsoever which are of a great or very large bulk or fatness by right or custom any ways used belonging to us, and to the office of our High Admiral of England, and also of and concerning all casualties at sea, goods wrecked, flotsom, jetsom, lagon, shares, things cast overboard, and wreck of the sea, and all goods taken or to be taken as derelict or by chance found or to be found, and all other trespasses,

misdemeanors, offences, enormities, and maritime crimes whatsoever done and committed, or to be done and committed, as well in and upon the high sea as in all ports, rivers, fresh waters, and creeks, and shores of the sea to high-water mark from all first bridges towards the sea in and throughout our said province and maritime coasts thereof and thereunto belonging, howsoever, whensoever, or by what means soever arising or happening, and all such things as are discovered and found out, as also all fines, mulcts, amercements, and compositions due and to be due in that behalf, to moderate, demand, collect, and levy, and to cause the same to be demanded, levied, and collected, and according to law to compel and command them to be paid, and also to proceed in all and every the causes and businesses above recited, and in all other contracts, causes, contempts, and offences whatsoever, howsoever contracted or arising, so that the goods or persons of the debtors may be found within the jurisdiction of the Vice-Admiralty in our said province according to the civil and maritime laws and customs of the said High Court of our Admiralty of England anciently used, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge, and all such causes and contracts to hear, examine, discuss, and finally determine (saving, nevertheless, the right of appealing to us in Council, and saving always the right of the said High Court of our Admiralty of England, and of the Judge and Registrar of our said Court, from whom or either of whom it is not our intention in anything to derogate by these presents), and also to arrest and cause and command to be arrested all ships, persons, things, goods, wares, and merchandizes for the premises and every of them, and for other causes whatsoever concerning the same, wheresoever they shall be met with or found within our province of Quebec in Canada aforesaid, and maritime parts thereof, either within liberties or without, and to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal coercion, and of inflicting any other penalty or mulct according to the laws and customs aforesaid, and to do and minister justice according to the right order and course of the law, summarily and plainly, looking only into the truth of the fact; and we empower you in this behalf to fine, correct, punish, chastise, and reform and imprison, and cause and command to be imprisoned, in any gaols being within our province of Quebec aforesaid, and maritime parts of the same, the parties guilty, and violators of the law and jurisdiction of our Admiralty aforesaid, and usurpers, delinquents, and contumacious absenters, masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen and artificers whomsoever, exercising any kind of maritime affairs, as well according to the aforementioned civil and maritime laws and ordinances and customs aforesaid and their demerits, as according to the statutes and ordinances

aforesaid, and those of our United Kingdom of Great Britain and Ireland for the Admiralty of England in that behalf made and provided, and to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases who are to be delivered, and to promulge and interpose all manner of sentences and decrees, and to put the same in execution, with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, or which any manner of ways respect or concern the sea or passage over the same, or naval or maritime voyages performed or to be performed, or the maritime jurisdiction aforesaid, with power also to proceed in the same according to the civil and maritime laws and customs of our aforesaid Court anciently used, as well those of mere office, mixed or promoted, as at the instance of any party, as the case shall require and seem convenient; and we do, by these presents, which are to continue during our Royal will and pleasure only, further give and grant unto you, the said George Okill Stuart, our said Commissary, the power of taking and receiving all and every the wages, fees, profits, advantages, and commodities whatsoever in any manner due and anciently belonging to the said office, according to the customs of the High Court of our Admiralty of England, committing unto you our power and authority concerning all and singular the premises in the several places above expressed (saving in all things the prerogative of the High Court of our Admiralty aforesaid), together with power of deputing and surrogating in your place for and concerning the premises one or more deputy or deputies; PROVIDED ALWAYS that the power of deputing and surrogating one or more deputy or deputies in your place and stead, shall only be exercised on good and sufficient cause shown, and that cause to be approved by our Governor or Lieutenant-Governor, or the officer administering the government of our said province for the time being; AND FURTHER, we do, in our name, command and firmly and strictly charge all and singular our governors, commanders, justices of the peace, mayors, sheriffs, marshals, keepers of all our gaols and prisons, bailiffs, constables, and all other our officers and ministers, and faithful and liege subjects, in and throughout our aforesaid province of Quebec in Canada and the maritime parts of the same and thereto adjacent, that in the execution of this our Commission they be from time to time, aiding, assisting, and yield obedience in all things, as is fitting unto you and your deputy whomsoever, under pain of the law and the peril which will fall thereon.

GIVEN AT LONDON, in the High Court of our Admiralty of England aforesaid, under the Great Seal thereof, the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and seventy-three, and of our reign the thirty-seventh.

H. A. BATHURST, A.R.

S.

Geographical limits of the Ancient Government of Quebec, and of its subsequent territorial divisions under Acts of the Parliament of the United Kingdom.

His late Majesty, King George III., by his Royal Proclamation, bearing date the 7th day of October, in the third year of his reign (1763), was pleased to declare that he had limited and bounded the Government of Quebec as follows :—

“The Government of Quebec, bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the south end of the lake Nipissim ; from whence the said line crossing the river St. Lawrence, and the lake Champlain, in forty-five degrees of north latitude, passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay-des-Chaleurs, and the coast of the gulf of St. Lawrence to Cape Rosiers, and from thence crossing the mouth of the river St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid river St. John.”

By the same proclamation His Majesty further declared that he had put the coast of Labrador, from the river St. John to Hudson's Straits, with the Islands of Anticosti and Madelaine, and all other smaller islands lying on the said coast, under the care and inspection of the Government of Newfoundland.

By an Act passed in the fourteenth year of the reign of his said late Majesty, intituled, “An Act for making more effectual provision for the government of the province of Quebec, in North America,” all the territories, islands, and countries in North America belonging to the Crown of Great Britain, therein described, and all such territories, islands, and countries which had, since the 10th day of February, 1763, been made part of the Government of Newfoundland, were, during His Majesty's pleasure, annexed to and made part and parcel of the province of Quebec, as created and established by the said Royal Proclamation.

The 31 Geo. III. c. 31-2, reciting that His Majesty had been pleased to signify, by message, to both Houses of Parliament, his royal intention to divide the province of Quebec into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, enacts that there shall be within each of the said provinces respectively a legislative council, and an assembly, to be severally composed and constituted in the manner thereafter described.

The Province of Quebec was accordingly divided into the Provinces of Upper and Lower Canada by the Royal Proclamation, issued in pursuance of the last-mentioned Act, and bearing date at the Castle of St. Lewis, in the city of Quebec, on the 18th of November, 1791.

By the Stat. 49 Geo. III. c. 27 ; 51 Geo. III. c. 45 ; and 5 Geo. IV. c. 67, the coast of Labrador, from the river St. John to Hudson's Straits, and the Island of Anticosti, and all the adjacent islands, except the Island of Madelaine, were annexed to and made to form part of the Government of Newfoundland. But by the Stat. 6 Geo. IV. c. 59, s. 9, so much of the said coast as lies to the westward of a line to be drawn due north and south from the bay or harbour of *Anse Sablon* inclusive, as far as the fifty-second degree of north latitude, with the Island of Anticosti, and all other islands adjacent to such part as last aforesaid are re-annexed to and make a part of the Province of Lower Canada.

By 3 & 4 Vict. c. 35, s. 1, it was made lawful for Her Majesty, with the advice of Her Privy Council, to declare or to authorise the Governor-general of the said two Provinces of Upper and Lower Canada to declare, by proclamation, that the said provinces, upon, from and after a certain day in such proclamation to be appointed, which day should be within fifteen calendar months next after the passing of that Act, should form and be one province, under the name of the "Province of Canada," and thenceforward the said province should continue and be one province, under the name aforesaid, upon, from and after the day so appointed as aforesaid.

In pursuance and exercise of the powers so vested in the Queen by the last-mentioned Act, Her Majesty did, on the 10th day of August, 1840, with the advice of Her Privy Council, authorize the Governor-general of the two Provinces of Upper and Lower Canada to declare, by proclamation, that the said two provinces upon, from and after a certain day, in such proclamation to be appointed, such day being within fifteen calendar months next after the passing of the said Act, should form and be one province, under the name of the Province of Canada.

By Her Majesty's Royal Proclamation, issued under the provisions of the 3 & 4 Vict. c. 35, and bearing date at the City of Montreal on the fifth day of February, 1841, it was declared that her said two provinces, upon, from and after the tenth day of the then present month of February, should form and be one province, under the name of the Province of Canada.

The limits of the Province of Quebec, under the proclamation of 1763, included all the territory comprised within Upper and Lower Canada. It was separated into two provinces by the proclamation of 1791, under the 31 Geo. III. c. 31 ; and these two were re-united into one province by the Union Act, 3 & 4 Vict. c. 35 ; and the

Province of Canada became identical with the former Province of Quebec.

The Province of Canada, by the Act establishing the Dominion, is again divided into the Provinces of Ontario and Quebec, corresponding to Upper and Lower Canada, and these now form portions of the Dominion of Canada, each with a Legislature for local purposes.

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2. The Admiralty has jurisdiction in cases of collision occurring on the high seas, where both the vessels are the property of foreign owners. *The Anne Johanne—Larsen*, 43.

3. Difficulties as to the jurisdiction of Admiralty, which had continually occurred from the words of the statute of Richard II., are now wholly removed by the 3 & 4 Vict. c. 65, passed on 7th August, 1840; "The Admiralty Court Act, 1861" (24 Vict. c. 10); and "The Vice-Admiralty Courts Act, 1863" (26 Vict. c. 24), pp. 235, 247, 253.

Matters in respect of which Vice-Admiralty Courts have jurisdiction specified, *ib.* 255.

4. As to jurisdiction in respect of forfeitures of ships for offences against "The Foreign Enlistment Act, 1870," see 33 and 34 Vict. c. 90, ss. 19, 26 & 30, pp. 286, 292, 295, 297.

"The Admiralty Court Act, 1861," does not extend *per se* to the Vice-Admiralty Courts. *The City of Petersburg*, 351.

ADVOCATES.

1. All persons entitled to practise as advocates, barristers-at-law, proctors, attorneys-at-law, or solicitors, in the Superior Courts of a British possession, shall be entitled to practise in the same respective capacities in the Vice-Admiralty Court or Courts of such possession, and shall have therein all the rights and privileges, respectively, belonging to advocates, barristers-at-law, proctors, attorneys-at-law, and solicitors, and shall in like manner be subject to the authority of the person for the time being lawfully exercising the

office of Judge of such Court. 30
& 31 Vict. c. 45, s. 15, p. 260.

2. Non-payment of fees received by advocate or proctor for Registrar a breach of discipline of which the Court may take cognizance in a summary manner. *Ex parte Drolet*, 1.

See PROCTORS.

APPEAL.

An Appeal from a decree or order of a Vice-Admiralty Court lies to Her Majesty in Council ; but no appeal shall be allowed, save by permission of the Judge, from any decree or order not having the force or effect of a definite sentence or final order (26 Vict. c. 24, s. 22) ; appeal to be made within six months, s. 23, p. 257.

APPENDIX.

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See ACTS OF PARLIAMENT ; ACTS OF PARLIAMENT OF CANADA ; ACT OF CONGRESS OF THE UNITED STATES ; "FOREIGN ENLISTMENT ACT, 1870 ;" REGULATIONS ; INLAND NAVIGATION ; QUEBEC ; NOVA SCOTIA ; COMMISSION OF JUDGE.

APPOINTMENT.

Of Vice-Admiral, or any Judge, Registrar, Marshal, or other officer of a Vice-Admiralty Court established in the British Possessions. 26 Vict. c. 24, ss. 3, 4, 5, 6, & 7 ; p. 254.

ASSESSORS.

Opinions of in the following cases :

1. THE SECRET, 133.
2. THE HIBERNIAN, 155.

3. THE THAMES, 222.

4. THE WAVELET, 355.

5. THE CHASE, 361, 369.

BOTTOMRY.

1. Jurisdiction in respect of Bottomry or Respondentia Bonds confirmed by the "Vice-Admiralty Courts' Act, 1863 ;" p. 255.

2. Advances which may become the subject of bottomry, must be advances made for the service of the ship during the particular voyage for which she is engaged. *The Adonis* — *Lavoie*, 125.

3. A bottomry bond given by the master after the advances had all been made is valid, provided they were made with an understanding that such bond should be given, *ib.*

4. The validity of the bond is not affected by the circumstance of the money being advanced before an intervening voyage, if given for advances necessary for the vessel to prosecute and complete the original voyage, *ib.*

5. Unless fraud or collusion proved, or that other credit existed, every fair presumption is to be allowed to uphold the bond, *ib.*

See NOVA SCOTIA, 4.

BLACK, The Hon. Henry.

Opinions of noticed by the Chief Justice of Nova Scotia, 348.

See PREFATORY NOTICE to this Volume.

BROUGHAM, (LORD).

As respects the Act 14 & 15 Vict. c. 99, commonly called Lord

Brougham's Act, see *The Courier—Wyatt*, 91.

BY-LAWS.

See *VIS MAJOR*.

CANADIAN WATERS.

Decisions bearing on the rules and regulations contained in the Act of the Legislature of the Province of Canada "respecting the navigation of Canadian waters":—

1. *THE AURORA*, 52.
2. *THE ARABIAN*, 72.
3. *THE ALMA*, 72.
4. *THE JAMES MCKENZIE*, 87.

The same rules and the same precautions for avoiding collisions and other accidents as are now adopted in the United Kingdom and other countries prevail throughout all the waters of the Dominion of Canada. 31 Vict. c. 58, *Dominion of Canada*, p. 315.

CARGO.

As to short delivery or damaged, pp. 350, 374.

See *JURISDICTION*, 15; *NOVA SCOTIA*, 5.

CHIEF JUSTICE.

When the office of Judge of a Vice-Admiralty Court in any British Possession becomes vacant, the Chief Justice, or the principal judicial officer of such Possession, or the person for the time being lawfully authorized to act as such, shall be *ex officio* Judge of the Vice-Admiralty Court, until a notification is received

that a formal appointment to that office has been made by the Admiralty. 26 Vict. c. 24, s. 4, p. 254.

COLLISION.

1. The non-compliance by a vessel with the Trinity House regulations, as to the exhibition of lights, will not prevent the owners from recovering damages for injuries received from another vessel by collision, if the officers of the latter vessel saw the former, and knew her position. *The Martha Sophia—Bouchot*, 14.

2. Where a collision occurs, without blame being imputable to either party, loss must be borne by the party on whom it happens to alight. *The Margaret—Clark*, 19.

3. Where the evidence on both sides is conflicting and nicely balanced, the Court will be guided by the probabilities of the respective cases which are set up. *The Ailsa—Alexander*, 38.

4. Where damage is occasioned by unavoidable accident, arising from foggy weather, the loss must be sustained by the party on whom it has fallen. *The Anne Johanne—Larsen*, 43.

5. The law imposes upon a vessel, having the wind free, the obligation of taking proper measures to get out of the way, *ib.*

6. Where a collision occurs between two sailing vessels from the non-observance of the rule respecting lights, the owner of the vessel by which such rule has been infringed, cannot recover for any damage sus-

tained in the collision. *The Aurora*—*Morrison*, 52.

7. Between a British vessel and a foreign ship within Canadian waters, the duty and the right of the parties is to be determined by the Act regulating the navigation of such waters, *ib.*

8. For a collision occasioned by the mismanagement of a pilot taken on board and placed in charge of a ship, in conformity with the requirements of the law,—enforced by a penalty,—the vessel is not liable. *The Lotus*—*Clark*, 58.

9. When a vessel is lying at anchor and another vessel is placed voluntarily, by those in charge, in such a position that danger will happen if some event arises, which is not improbable, those in charge of the second vessel must be answerable, *ib.*

10. Whenever two vessels are seen from each other, even in parallel courses, provided they are close to each other, or in any course so that there is reasonable probability of a collision, it is their duty, unless there be some impediment, to obey the rule prescribed by the Act respecting the navigation of Canadian waters. *The Arabian and the Alma*, 72.

11. Where a steamer, coming down the St. Lawrence, upon a dark night, meets a sailing vessel, and those in charge of the steamer are in doubt what course the sailing vessel is upon, it is their duty to ease her engine and slacken her speed, until they ascertain the course of the sailing vessel, *ib.*

12. The rule of the Admiralty Court, that in case of mutual blame the damage was to be divided, is superseded by sect. 12 of the "Act respecting the Navigation of Canadian Waters," and the penalty on a party neglecting the rules enjoined by sect. 8 is to prevent the owner of one vessel recovering damages from the other also in fault, *ib.*

13. A steamer going up the St. Lawrence at night, on a voyage from Quebec to Montreal, saw the light of another steamer coming down the river, distant about two miles; and when at the distance of rather more than half a mile, took a diagonal course across the river in order to gain the south channel, starboarding her helm, and then putting it hard-a-starboard. The steamer coming down, having ported her helm on seeing the other, a collision ensued: *Held*, that the vessels were meeting each other within the meaning of the Act regulating the navigation of the waters of Canada, and that the steamer going up the river was solely to blame for the collision in not having ported her helm. *The James McKenzie*—*Bouillé*, 87.

14. A vessel having the wind free is bound to take proper means to get out of the way of a vessel close hauled. *The Courier*—*Wyatt*, 91.

15. The owners of a vessel having a branch pilot on board are only exempt from liability for damage where the damage is caused exclusively by the negligence or unskilfulness of the pilot, *ib.*

See *THE GORDON*, 198.

16. Of two vessels beating to the windward on opposite tacks, it is the duty of the vessel on the starboard tack to keep her course, and of the vessel on the port tack to give way. *The Liberty—Ouellet*, 102.

17. It is not enough to show that the accident could not be prevented by the party at the moment it occurred, if previous measures could have been adopted to render the occurrence of it less probable, *ib.*

18. Collision by two vessels while sailing, one on the starboard tack, close to the wind, and the other on the port tack: *Held*, that the latter was to blame for not porting her helm in time, and that the former complied with the rule of the road by keeping on a wind close hauled. *The Tornado—Crawford*, 172.

19. The pilot in charge of a ship is solely responsible for getting her under weigh in improper circumstances. Defence in a cause of damage upon this ground sustained in the case of a vessel leaving the port of Quebec and running foul of another ship. *The Anglo-Saxon—Westgarth*, 117.

20. Where there is a reasonable doubt as to which party is to blame, the loss must be sustained by the party on whom it has fallen. *The Rockaway—Bossance*, 129.

21. Where the damage was attributable to a deficiency of look-out and management on board the ship doing the damage, and not solely to fault or neglect on the pilot's part,

the owners were held liable for the damage. *The Secret—Davison*, 133.

See *THE COURIER*, 91; and *THE GORDON*, 198.

22. A vessel, while at anchor in the harbour of Quebec, having been run into and made to start from her anchorage, and to drift down with the tide against other vessels, dismissed upon the ground of inevitable accident. *The McLeod—Walters*, 140.

23. A vessel in motion is bound to steer clear of a vessel at anchor, and nothing can excuse her not doing so but inevitable accident. *The Oriental—Morris*, 144.

24. Where a collision was occasioned by improper steering of a vessel, the exclusive act of the pilot, the vessel was held entitled to the exemption provided by the statute. *The Hibernian—Smith*, 148.

25. A vessel held to be in fault for having ported her helm and thereby caused damage which might have been avoided if she had kept her course or starboarded. *The Lorne—Martin*, 177.

26. Where a steamer at anchor showed a green and white light instead of a white light only, as directed for steamers at anchor, she was held to have been in fault, *ib.*

27. The fault of one vessel will not excuse any want of care, diligence, or skill in another, so as to exempt her from sharing the loss or damage. *The Germany—The City of Quebec*, 158.

28. When both ships were in fault

the Admiralty law divided the damages of the owners of the ships, *ib.*

29. But this rule was qualified by the Act respecting the Navigation of Canadian Waters, which agrees with the 298th section of the Merchant Shipping Act, *ib.*

30. In "The Merchant Shipping Act Amendment Act" (25 & 26 Vict. c. 63, s. 29) this clause was repealed, and the old rule of dividing the damage was re-established. But the rule and the penalty provided for the breach of them in Canadian waters remained unchanged.

31. The enactment in "The Merchant Shipping Act Amendment Act, 1862," to the effect, that if in any case of collision it appeared to the Court that such collision *was occasioned* by the neglect of any regulation under that Act, the ship so neglecting should be deemed to be in fault is so far changed, that if in any case of collision it is proved to the Court that the regulations under "The Merchant Shipping Acts, 1854 to 1873," have been infringed, the ship by which those regulations were so infringed shall be deemed to be in fault. "Merchant Shipping Act, 1873," s. 17 ; p. 329, and note.

See the DOMINION ACT (31 Vict. c. 58, s. 11).

32. The Court of Vice-Admiralty exercises jurisdiction in a case of collision in the harbour of Halifax. *The Wavelet*, 354.

See CROSS CAUSES; DAMAGE DONE BY ANY SHIP; MASTER OF SHIP, 2, 3.

COMPULSORY PILOTAGE.

1. For a collision occasioned by the mismanagement of a pilot, taken on board and placed in charge of a ship in conformity with the requirements of the law, enforced by a penalty, the vessel is not liable. *The Lotus—Clark*, 58.

2. The owners of a vessel having a branch pilot on board are only exempt from liability for damage, where the damage is caused exclusively by the negligence or unskilfulness of the pilot. *The Courier—Wyatt*, 91.

3. For damages done by a collision in the harbour of Quebec, occasioned by the default, negligence, or unskilfulness of a branch pilot, the owners are not responsible. *The Anglo-Saxon—Westgarth*, 117.

But see subsequent enactment in "THE PILOTAGE ACT, 1873," of the Dominion of Canada ; p. 230, in note.

4. In Nova Scotia there is no compulsory pilotage in the English sense of the term. Hence, there being a direct privity between the pilot and the ship, the latter is liable in Admiralty for damage caused by his acts. *The Wavelet*, 354, 356.

5. The rule of the English Admiralty regulating the employment of pilots has never been adopted or applied, under the laws of the United States. *The China*, 231.

6. Exemption from liability is not taken away from the owners, though the master has the power of selection from amongst a number of pilots. *The Hibernian—Smith*, 148.

7. Where an ocean steamer descending the river St. Lawrence opposite a buoy designating a bend in the channel for her to turn, instead of doing so, crossed over and sunk a barge in tow of a tug steamer on the opposite side : *Held*, that the tug steamer and her tow were not to blame, by reason of an alleged custom for ascending vessels to stop below the buoy for descending vessels to pass it first ; and that, if there were such a custom, it would afford no excuse for a descending steamer coming into collision if she could have avoided it. But it appearing that the cause of collision was, exclusively, the act of the pilot of the ocean steamer, exemption from liability granted to the owner. *The Thames—Hyde*, 222.

8. No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any place where the employment of such pilot is compulsory by law. See 388th section of "The Merchant Shipping Act, 1854," and 14th section of the Act respecting the navigation of Canadian waters, p. 322. But a change has been made by the 56th section of An Act of the Dominion Parliament, "The Pilotage Act, 1873," which enacts, "that after its commencement, no owner or master of any ship shall, in any case, be compelled to employ or to give his ship into the charge of a pilot, notwithstanding

any Act making the employment of a pilot compulsory." By the 92nd section of this Act, the 14th section of the "Act respecting the Navigation of Canadian Waters" above mentioned is expressly repealed.

See OWNERS, 1, 2, 3, 4.

CONFLICTING DECISIONS.

Decisions with respect to the liability of the owner of a vessel for damage done by her while in charge of a pilot, given before the passing of the Act of the Canadian Legislature (12 Vict. c. 114, s. 5), are not applicable under the law as it stood, after having been subjected to the important changes made by that Act. *The Lotus—Clark*, 58.

CONGRESS.

See ACT OF CONGRESS OF THE UNITED STATES OF AMERICA.

CONSTRUCTION.

See MARINER'S CONTRACT, 1, 2, 3, 4.

CONTRACT.

See SALVAGE; MARINER'S CONTRACT; SPECIAL CONTRACT.

COSTS.

1. The practice of the Court is not to give costs to either party, where a collision has occurred from inevitable accident. *The Margaret—Clark*, 19. See *THE ANNE JOHANNE*, 43 ; *THE MCLEOD*, 140 ; and *THE HAROLD HARFAAGER*, 208.

2. Nor, where the damages have been found to proceed from the fault

of the pilot alone. *The Lotus*, 58. See *THE THAMES*, 222.

3. Not usually decreed in Courts of Admiralty against seamen, who are unsuccessful in their suits. A decree for costs would, in most cases, subject the seaman to imprisonment, without being productive of any real advantage to the other party. *The Washington Irving—Durant*, 97.

4. A party who does not accept a tender made in current bank-notes, or a cheque on a bank, drawn by a merchant of established credit, exposes himself to the payment of costs to the adverse party. *The British Lion—Mann*, 114.

5. Where evidence was evenly balanced and suit dismissed, no costs were allowed. *The Ailsa—Alexander*, 38.

COURTS.

For the Jurisdiction of the Courts of Admiralty, see ADMIRALTY JURISDICTION; CUSTOMS; CROSS CAUSES; DROITS OF ADMIRALTY; JURISDICTION; VICE-ADMIRALTY COURT; REVENUE.

CROSS CAUSES.

If a cause of damage by collision be instituted in any Vice-Admiralty Court, and the defendant institute a cross cause in respect of the same collision, the Judge may, on application of either party, direct both causes to be heard at the same time and on the same evidence; and if the ship of the defendant in one of the causes has been arrested, or security given by him to answer judgment, but the

ship of the defendant in the other cause cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the former cause until security has been given to answer judgment in the latter cause. 26 Vict. c. 24, s. 21; p. 257.

CUSTOMS.

See REVENUE CASES.

DAMAGE, "DONE BY ANY SHIP."

Vice-Admiralty Courts have jurisdiction, in respect of claims, for damage done by any ship (26 Vict. c. 24, s. 10, p. 255), as in a case of damage to a wharf in the harbour of Halifax. *The Chase*, 361.

On this head, see the case of *The Malvina*, 1 Lush. 493, and the judgment of the Privy Council affirming that of the High Court of Admiralty. 1 Moore's P. C. C. p. 357 (New Series).

DERELICT.

In no case, however meritorious the service, does the High Court of Admiralty of England decree more than a moiety for salvage. *The Marie Victoria—Ellis*, 109.

DENMAN, (LORD).

As respects the Act 6 & 7 Vict. c. 85, commonly called Lord Denman's Act, see *The Courier—Wyatt*, 91.

DEPUTY JUDGE.

See JUDGE.

DEPUTY REGISTRAR.

See REGISTRAR.

DEPUTY MARSHAL.

See **MARSHAL.**

DESERTION.

By the General Maritime Law, as well as by the Merchant Shipping Act, desertion from the ship in the course of the voyage is held to be a forfeiture of the antecedent wages earned by the party. *The Washington Irving*—*Durant*, 97.

DETENTION

Of Seaman. See **MERCHANT SHIPPING ACT**, 1873, s. 9, p. 328.

DEVIATION.

See **MARINER'S CONTRACT**, 1, 2, 3, 4.

DROITS OF ADMIRALTY.

The Vice-Admiralty Courts have jurisdiction in all matters arising out of Droits of Admiralty. 26 Vict. c. 24, s. 11, p. 255.

EVIDENCE.

1. Entry of the desertion in the official log-book deemed sufficient proof, unless the seaman can show, to the satisfaction of the Court, that he had sufficient reason for leaving the ship. *The Washington Irving*—*Durant*, 97.

2. Persons who have the control and direction of vessels—though interested in clearing themselves of fault, and throwing it upon the other party—are no longer incompetent to give evidence, leaving the question of

credibility to the discretion of the Court. *The Courier*—*Wyatt*, 91, 95.

3. Affirmative testimony is entitled to greater weight than negative. *The Anglo-Saxon*—*Westgarth*, 117, 120.

EXCEPTIVE ALLEGATION.

The admission of an allegation, exceptive of the testimony of a pilot on the ground that he was an interested witness, as being responsible to his employers for what occurred while he was the pilot of the vessel, suspended till the hearing of the principal cause, when the Court finally rejected it. *The Courier*—*Wyatt*, 91, 95.

FAULT.

See **INSCRUTABLE ACCIDENT.**

FEES.

1. The Court disclaims all jurisdiction in the matter of fees. The Registrar may, in his option, require them when the service is performed; or he may give credit, and then his recourse, if they are not paid, is in the ordinary courts of the country. *Ex parte Drolet*, 1.

2. In the High Court of Admiralty the fees of the Judge and officers of the Court abolished and salaries substituted (3 & 4 Vict. cap. 66, p. 241); but retained in Vice-Admiralty Courts. See **HIGH COURT OF ADMIRALTY OF ENGLAND**, 2; **JUDGE**, 14; **NOVA SOOTIA**, 7.

FISHERIES.

1. A foreign vessel illegally fishing in British waters within three miles

of the coast of Canada, and not navigated according to the laws of the United Kingdom, or of Canada, and not having a licence to fish, contrary to the provisions of the Canadian Acts of Parliament (31 Vict. c. 61, and 33 Vict. c. 15), declared to be forfeited. *The Samuel Gilbert*, 167.

2. A claim for a schooner, being a foreign vessel, and cargo, rejected, and forfeiture of them declared for fishing in Canadian waters contrary to the fishing laws. *The Franklin S. Schenck*, 169.

FOG SIGNALS.

1. Rules concerning fog signals issued in pursuance of "The Merchant Shipping Act Amendment Act, 1862," under an Order in Council, dated the 9th January, 1863, p. 301.

2. These rules were adopted in the province of Canada by an Act of the Legislature passed on the 30th June, 1864 (27 & 28 Vict. c. 13, s. 2, art. 10), and re-enacted by an Act of the Parliament of the Dominion of Canada passed on 22nd May, 1868 (31 Vict. c. 58), p. 315.

3. They have also been adopted in the United States of America, by an Act of Congress passed on 29th April, 1864. C. 69, p. 308.

FOREIGN ENLISTMENT ACT.

Every ship or vessel fitted out or equipped in Her Majesty's dominions for warlike purposes against the dominions of a friendly state, without Her Majesty's licence, with all the materials and ammunition

and stores which may belong to or be on board of such ship or vessel, liable to forfeiture under the provisions of "The Foreign Enlistment Act, 1870."

See VICE-ADMIRALTY COURT, 7.

FOREIGN VESSELS.

1. The Admiralty has jurisdiction in cases of collision occurring on the high seas, when both the vessels are the property of foreign owners. *The Anne Johanne—Larsen*, 43.

2. Ancient jurisdiction of the High Court of Admiralty restored by 3 & 4 Vict. c. 65, s. 6, p. 237.

3. And by 26 Vict. c. 24, s. 10, to the Vice-Admiralty Courts, with respect to claims of material men for necessaries furnished to foreign ships, p. 255.

4. The rules prescribed by the Act respecting the navigation of Canadian waters are operative upon foreign as well as British ships. 31 Vict. c. 58, s. 10, p. 321.

5. Where vessels are within British waters, a statute general in terms and intended for the protection of navigation, would apply to foreigners, as in case of a statutory obligation to take pilots on board under certain circumstances. *Swabey's Rep.* 367.

FOREIGN STATE.

See SEAMEN, 2.

FORFEITURES.

1. Vessels for warlike purposes, fitted out or equipped in Her Majesty's dominions, without Her Ma-

jeesty's licence, contrary to the provisions of "The Foreign Enlistment Act," to be prosecuted and condemned in the Court of Admiralty, and not in any other Court. "The Foreign Enlistment Act, 1870," s. 19, p. 291.

2. Court of Admiralty shall mean the High Court of Admiralty of England or Ireland, the Court of Session of Scotland, or any Vice-Admiralty Court within Her Majesty's dominions. *Ib.* s. 30, p. 297.

See FISHERIES.

FOUL BERTH.

If one vessel comes to anchor, it is the duty of those in charge of any other vessel anchoring near her, to do so in such a position as that the vessels may swing with the tide without risk of coming together. *The Rockaway—Bossance*, 129, 130-1.

FREE PILOTAGE.

See COMPULSORY PILOTAGE.

GOVERNOR.

1. In any British possession where the office of Vice-Admiral is, or shall become vacant, the Governor of such possession shall be *ex officio* Vice-Admiral thereof, until a notification is received that a formal appointment to such office is made by the Admiralty. 26 Vict. c. 24, s. 3, p. 254.

2. On any vacancy in the office of Judge, Registrar, or Marshal of any Vice-Admiralty Court, the Governor of the British possession in which the Court is established shall, as soon as it is practicable, communicate to one

of Her Majesty's Principal Secretaries of State the fact of the vacancy, and the name of the person succeeding or appointed to the vacant office. 26 Vict. c. 24, s. 6, pp. 254-5.

3. On the Governor of any British possession, who is also Vice-Admiral thereof, vacating the office of Governor of such possession, the office of Vice-Admiral of the same possession shall thereupon be deemed to be also vacant within the meaning of the third section of "The Vice-Admiralty Courts Act, 1863." 30 & 31 Vict. c. 45, s. 4, p. 259.

GOVERNMENT OF QUEBEC.

Ancient limits of, p. 381.

HELM.

Time for reflection to be allowed before porting. *The Margaret—Clark*, 19.

See COLLISION, 25.

HIGH COURT OF ADMIRALTY OF ENGLAND.

1. An Act to improve the practice and extend the jurisdiction of the High Court of Admiralty of England. 3 & 4 Vict. c. 65, p. 235.

2. An Act to make provision for the Judge, Registrar, and Marshal of the High Court of Admiralty of England. 3 & 4 Vict. c. 66, p. 241.

The Judge of not to sit in the House of Commons. *Ib.*

By this Act the remunerating of the Judge, Registrar, and Marshal by fees is abolished, and fixed salaries

substituted. A fund, called "The Fee Fund of the High Court of Admiralty," established, pp. 241, 246.

3. The High Court of Admiralty of England may revise the charges of any practitioners in any Vice-Admiralty Court, 256.

See TABLE OF FEES, 5.

HIGH COURT OF ADMIRALTY OF IRELAND.

See IRELAND.

HOME PORTS.

See NOVA SCOTIA, 4.

IMPERIAL PARLIAMENT.

See ACTS OF PARLIAMENT.

INEVITABLE ACCIDENT.

1. Where a collision occurs without blame being imputable to either party, loss must be borne by the party on whom it happens to alight. *The Margaret—Clark*, 19.

2. Is that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution, and maritime skill. *The McLeod—Walters*, 140.

INLAND NAVIGATION.

1. Regulations respecting collision appended to Order in Council dated 30th November, 1864, apply to ships belonging to the United States of America, when navigating the inland waters of North America, whether within British jurisdiction or not, pp. 312, 313.

2. As to the maritime commerce

of the Western Lakes not being inland navigation. OPINION OF THE SUPREME COURT OF MICHIGAN, p. 329.

See PREFATORY NOTICE TO THIS VOLUME.

INSCRUTABLE ACCIDENT.

In a case of collision where there is reasonable doubt as to which party is to blame, the loss must be sustained by the party on whom it has fallen. *The Rockaway—Bossance*, p. 129.

INTERPRETATION OF TERMS.

1. For the purposes of "The Vice-Admiralty Act, 1863," the term "ship" includes "every description of navigable vessel not propelled by oars only, whether British or foreign." 26 Vict. c. 24, s. 2, p. 254.

2. In "The Vice-Admiralty Courts Act Amendment Act, 1867" (30 & 31 Vict. c. 45), the following terms shall have the respective meanings therein assigned to them, that is to say:—

3. "Judicial powers" shall mean all powers and authorities which may be lawfully exercised by, and all duties by law imposed upon, any Judge in the trial, hearing, or progress of any cause.

4. "Ministerial powers" shall mean all powers and authorities which may be lawfully exercised by, and all duties by law imposed upon, any such Judge, not included under the term "judicial powers." "Sit," or "sitting," shall mean sit or sitting for the exercise of judicial powers,

whether in Court or in chambers, p. 259.

3. As to the term "MEETING END ON," see ORDER IN COUNCIL OF 30TH JULY, 1868, pp. 325, 327.

See "FOREIGN ENLISTMENT ACT," s. 30, pp. 286, 296.

IRELAND.

An Act to extend the Jurisdiction, alter, and amend the Procedure and Practice, and to regulate the Establishment of the Court of Admiralty in Ireland. 30 & 31 Vict. c. 114, p. 261.

Judge of not to sit in Parliament, or practise as an advocate or barrister, p. 263.

See JURISDICTION, 16.

JUDGE.

1. Where the office of Judge of any Vice-Admiralty Court is vacant, the Chief Justice, or the principal judicial officer, or the person for the time being lawfully authorised to act as such, to be *ex officio* Judge until a notification is received of a formal appointment by the Admiralty. 26 Vict. c. 24, s. 4, p. 254.

2. On a vacancy in the office of Judge, Registrar, or Marshal of any Vice-Admiralty Court in any British possession, the fact of the vacancy, and the name of the person succeeding or appointed to the vacant office, to be notified to the Home Government. 26 Vict. c. 24, s. 6, p. 254.

3. On any vacancy occurring in the office of Registrar or Marshal, the Judge may, with the approval of the

Governor, appoint some person to the vacant office, until a notification is received that a formal appointment thereto has been made by the Admiralty. *Ib.* s. 5, p. 254.

4. The Judge may also appoint some person to act as Registrar or Marshal during the temporary absence of either of those officers. *Ib.*

5. The Judge of any Vice-Admiralty Court may, with the approval in writing of the Governor, appoint one or more Deputy Judge or Judges to assist or represent him in the execution of his judicial powers. 30 & 31 Vict. c. 45, s. 5, p. 259.

6. Such Deputy Judge may exercise all the judicial powers of the Judge. *Ib.* s. 6.

7. Any Deputy Judge may sit at the principal seat of government or elsewhere in the possession at the same time that the Judge or any other Deputy Judge is sitting, and either at the same or at any other place in such possession, and whether the Judge is or is not at that time within the possession. *Ib.* s. 7, p. 260.

8. The Judge may require any Deputy Judge or Judges to sit with him in the same Court, and in such case the decision of the majority, or, if they are equally divided in opinion, the decision of the Judge, shall be the decision of the Court; and such decision shall be subject to the same right of appeal in all respects as if it had been made by the Judge alone. *Ib.* s. 8.

9. The Judge may direct at what

place and time any Deputy Judge shall sit, and what causes shall be heard before him, and generally make such arrangements as to him shall seem proper as to the division and despatch of the business of the Court. *Ib.* s. 9.

10. The Judge may, with the approval in writing of the Governor, revoke the appointment of any Deputy Judge or Judges, but the appointment shall not be determined by the occurrence of a vacancy in the office of the Judge. *Ib.* s. 10.

11. The Judge may, if he thinks fit, from time to time delegate all or any of his ministerial powers to any Deputy Judge or Judges. *Ib.* s. 11.

12. The Judge may from time to time, if he thinks fit, appoint any competent persons to act respectively as Deputy Registrars and Deputy Marshals of the Court, and may, if he thinks fit, at any time revoke any such appointment, but the appointment shall not be determined by a vacancy in the office of the Judge. *Ib.* s. 12.

13. The Admiralty may, if they think fit, at any time revoke the appointment of any Deputy Judge, Deputy Registrar, or Deputy Marshal appointed under this Act. *Ib.* s. 13.

14. Any Deputy Judge, Deputy Registrar, or Deputy Marshal, to be entitled to the same fees in respect of any duty performed by him as would be lawfully payable to the Judge, Registrar, or Marshal respec-

tively for the performance of the same duty. *Ib.* s. 14.

15. Commission of the Judge of the Vice-Admiralty Court of the Province of Quebec. 377.

See LORD HIGH ADMIRAL.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Opinion of the Lords of the Judicial Committee affirming the judgment of the Vice-Admiralty Court of Lower Canada in the case of *The Margaret*, 23.

JUDICIAL POWERS.

See INTERPRETATION OF TERMS, 3.

JURISDICTION.

1. Although the Court abstains from interposing its authority in cases of mere disputed title, its jurisdiction over *causes of possession* has been constant and uninterrupted. *The Haidee—Kempthorn*, 25.

2. The occasion of the exercise of this jurisdiction arises generally in cases between part-owners who cannot agree respecting the employment of their ships. *Ib.*

3. The authority of the Court to detain the ship at the instance of the real owner against a mere wrongdoer is undoubted. *Ib.*

4. When the Court has original jurisdiction of the principal matter, it has also cognisance of the incidents thereto. *Ib.*

5. The Court has jurisdiction in cases of collision occurring on the high seas, where both vessels are the

property of foreign owners. *The Anne Johanne—Larsen*, 43.

6. The power of the Legislature of Canada extends to foreigners when within our own jurisdiction. *The Aurora—Morrison*, 52.

7. As to other matters in respect of which the Vice-Admiralty Courts have jurisdiction, see 26 Vict. c. 24, s. 10, p. 256.

8. The jurisdiction of the Vice-Admiralty Courts in Her Majesty's possessions abroad may be exercised whether the cause or right of action has arisen within or beyond the limits of such possession. *Ib.* s. 13, p. 256.

9. Except where it is expressly confined by that Act to matters arising within the possession in which the Court is established. *Ib.*

10. All proceedings for the condemnation and forfeiture of a ship, or ship and equipments, or arms and ammunition of war, in pursuance of "The Foreign Enlistment Act, 1870," shall be had in the Court of Admiralty, and not in any other Court. 33 & 34 Vict. c. 90, s. 19, pp. 286, 291.

11. The Court can, under the 26 Vict. c. 24, s. 10, enforce the payment of reasonable towage, but has no authority to enforce an agreement to employ a particular steam-tug either for a definite or an indefinite quantity of work. *The British Lion—Mann*, 114.

12. "The Merchant Shipping Act, 1854," excludes the jurisdiction of the Admiralty in suits for wages when

the amount due is less than 50*l.* sterling. Where the balance due to the master of a ship appeared to be under that amount the claim was dismissed, without an exception to the jurisdiction pleaded. *The Margaretha Stevenson*, 192.

See the case of *The City of Petersburg*, 343, 352, 353.

13. The Vice-Admiralty Court at Halifax in Nova Scotia exercises jurisdiction in the case of a vessel injured by collision in the harbour of Halifax. *The Wavelet*, 354, 357.

14. Also where damage was caused to a wharf by a vessel. *The Chase*, 361.

15. "The Imperial Act" (24 Vict. c. 10), whereby the jurisdiction of the High Court of Admiralty of England has been extended and the practice improved, confers jurisdiction upon it over claims for damage to cargo imported into England or Wales, and for wages due to seamen under a special contract. *The City of Petersburg*, 350.

See "Imperial Act," 24 Vict. c. 10, s. 6, p. 248.

16. A similar jurisdiction has been conferred upon the High Court of Admiralty of Ireland. 30 & 31 Vict. c. 114, ss. 33, 37, p. 268.

17. But withheld from the Courts of Vice-Admiralty, as not included in the Act 26 Vict. c. 24, p. 253, *et seq.*

See ADMIRALTY JURISDICTION; BOTTOMRY; COLLISION; COURTS; CUSTOMS; DROITS OF ADMIRALTY; FEES; "FOREIGN ENLISTMENT ACT;"

FOREIGN VESSELS; FORFEITURES;
INLAND NAVIGATION; MASTER OF
SHIP; MATERIAL MEN; MORTGAGE;
NAVY; NOVA SCOTIA; PIRATES AND
PIRATICAL VESSELS; POSSESSION;
PROCTORS; SALVAGE; SPECIAL CON-
TRACT; TITLE; TRADE AND NAVIGA-
TION LAWS; VICE-ADMIRALTY COURT;
WAGES.

JUSTICES OF THE PEACE.

1. Where a limited authority is given to justices of the peace they cannot extend their jurisdiction to objects not within it, by finding as a fact that which is not a fact; and their warrant in such cases will be no protection to the officer who acts under it. *The Haidee—Kempthorn*, 25.

2. Under section 523 of "The Merchant Shipping Act, 1854," a ship cannot be seized upon an order made by justices of the peace against a person who, at the time, is neither owner nor intrusted with the possession or control of her, *ib.*

LAKES.

As to the nature of the maritime commerce of the Western Lakes.

See INLAND NAVIGATION.

LIEN.

A maritime lien is not indelible, but may be lost by delay to enforce it where the rights of other parties have intervened. *The Haidee—Kempthorn*, 25.

LIGHTS.

1. By the Admiralty regulations, and by the Act of the Legislature of Canada, which makes precisely the same provision, sailing vessels, when under weigh, are required, between sunset and sunrise, to exhibit a green light on the starboard side and a red light on the port side of the vessels; and such lights are to be constructed as stated in such regulations. *The Aurora—Morrison*, 52.

2. Rules concerning lights, issued in pursuance of "The Merchant Shipping Act Amendment Act, 1862," and of an Order in Council, dated 9th January, 1864, 301.

3. The same rules adopted in the Province of Canada by an Act of the Legislature, passed 30th June, 1864, 315.

4. In the United States of America, by an Act of Congress, passed on 29th April, 1864, 308.

5. And in the Dominion of Canada, by an Act passed on 22nd May, 1868, 315. Diagrams to illustrate the use of the lights carried by vessels under the regulations and this Act, 323.

7. A steamer, while at anchor, showed a green and white light instead of a white light only: *Held* to have been in fault. *The Lorne—Martin*, 177.

LIMITATION.

1. There seems to be no fixed limit to the duration of a maritime lien. *The Haidee—Kempthorn*, 25.

2. It may be lost by negligence or

delay where the rights of third parties may be compromised, *ib.*

LOG BOOK.

See EVIDENCE, 1.

LOOK-OUT.

The want of a competent and vigilant look-out exacts, in all cases, from the vessel neglecting it, clear and satisfactory proof that the misfortune encountered was, in no way, attributable to her misconduct in this particular. *The Secret—Davison* 133.

Nor does it seem judicious that the man stationed as the look-out should be a foreigner speaking English imperfectly, and consequently liable to make reports slowly and incorrectly, and perhaps, more or less, unintelligibly. *The Oriental—Morris*, 144.

See THE COURIER, 91 ; THE GORDON, 198.

LORD HIGH ADMIRAL.

Nothing contained in the "Vice-Admiralty Courts Act, 1863," shall be taken to affect the power of the Lord High Admiral or the Commissioners for executing his office, to appoint any Vice-Admiral or any Judge, Registrar, or Marshal, or other officer of any Vice-Admiralty Court, by warrant and by letters patent, issued under the seal of the High Court of Admiralty (26 Vict. c. 24, s. 7, p. 255).

MANAGEMENT OF SHIP.

See COLLISION, 8.

MARINER'S CONTRACT.

1. Where the voyage in the Shipping Articles is described as one to North and South America: *Held*, that such description is too indefinite under the "Merchant Shipping Act, 1854. *The Marathon—Horst*, 9.

2. Where the voyage in the Shipping Articles is described as one to the United States: *Held* to be a good description under the terms "nature of the voyage" in the "Merchant Shipping Act, 1854." *The Ellerslie—Vickerman*, 35.

3. Where the voyage was described to be from Liverpool to Savannah, and any port or ports of the United States, of the West Indies and of British North America, the term of service not to exceed twelve months, it was *Held*, that the voyage intended was confined to the ports on the eastern shore of the continent, and that the articles did not authorize a voyage to San Francisco on the north-west coast. *The Ada* (in note) 11.

4. Where there was a deviation in the voyage from that stated in the Shipping Articles, occasioned by a return to the port of Quebec, not specified in them, the engagement of a seaman was terminated as there was no subsisting contract; and a plea to the jurisdiction alleging a subsisting voyage under the 149th section of "The Merchant Shipping Act, 1854," which enacts that "no seaman who is engaged for a voyage or engagement to terminate in the United Kingdom is entitled to sue

in any Court abroad for wages" over-ruled. *The Latona — Lewis*, 203.

Quære.—How far can an engagement of a seaman void from not stating the nature of the voyage as required by the "Merchant Shipping Act, 1854," be considered as operative under a subsequent Act ("Merchant Shipping Act, 1873"), which admits, instead, a statement of the maximum period of the voyage and the ports and places (if any), to which it is not to extend, *ib*.

See JURISDICTION, 12, 15; NOVA SCOTIA; SPECIAL CONTRACT.

MARITIME LIEN.

See LIEN; LIMITATION.

MARSHAL.

As to the appointment of Marshal on a vacancy occurring in the office (26 Vict. c. 24, s. 5, p. 254).

During the temporary absence of the Marshal, the Judge may appoint some person to act for him, *ib*.

As to appointment of deputy-marshals.

See JUDGE, 3, 4, 12, 13; FEES, 2.

MASTER OF SHIP.

1. To have the same remedies for wages as seamen (17 & 18 Vict. c. 104, s. 191), and also for his disbursements on account of the ship (24 Vict. c. 10, s. 10, p. 255).

2. Duties of, in case of collision, under the Dominion Act, 31 Vict. c. 58, s. 11, p. 321, and under "The

Merchant Shipping Act, 1873," s. 16, p. 328.

3. An omission of these duties without reasonable cause a misdemeanour, *ib*. 329.

MATERIAL MEN.

Vice-Admiralty Courts have jurisdiction in the following cases:—

Claims for necessities supplied in the possession in which the Court is established, to any ship of which no owner or part owner is domiciled within the possession at the time of the necessities being supplied: and

Claims in respect of the building, equipping, or repairing within any British possession, of any ship of which no owner or part owner is domiciled within the possession at the time of the work being done (26 Vict. c. 24, s. 10, p. 255).

MERCHANT SHIPPING ACT.

See COLLISION, 29, 31; MARINER'S CONTRACT; WAGES.

MICHIGAN.

Opinion of the Supreme Court of Michigan, one of the United States of America, relating to the question whether or not the Western Lakes, in commercial character, are bodies of water like the ocean itself, or only such as those which lie entirely within the boundaries of a state of the United States, 329.

MINISTERIAL POWERS.

See INTERPRETATION OF TERMS, 4.

MISDEMEANOUR.

See **MASTER OF SHIP.**

MORTGAGE.

Vice-Admiralty Courts have jurisdiction in respect of any mortgage where the ship has been sold by a Decree of the Court, and the proceeds are under its control (26 Vict. c. 24, s. 10, p. 255).

NAVIGATION.

The same rules of navigation, and the same precautions for avoiding collisions and other accidents as are now adopted in the United Kingdom and other countries are also adopted throughout the Dominion of Canada (31 Vict. c. 58, p. 315.)

NAVY.

Vice-Admiralty Courts have jurisdiction in all cases of breach of the regulations and instructions relating to Her Majesty's navy at sea (26 Vict. c. 24, s. 11, p. 255).

NELSON, CHIEF JUSTICE.

Opinion of, sitting in the circuit Court of the United States, respecting compulsory pilotage, 231.

NOVA SCOTIA.

1. Opinion of Sir WILLIAM YOUNG, chief justice, sitting as Judge in the Vice-Admiralty Court of Nova Scotia at Halifax, relating to the question of jurisdiction over a contract for wages different from the ordinary mariner's contract. *The City of Petersburg*, 343.

The jurisdiction conferred on the High Court of Admiralty over a special contract for seamen's wages by "The Admiralty Court Act, 1861," withheld from the Vice-Admiralty Courts, as it is not conferred by "The Vice-Admiralty Courts Act, 1863." *Ib.*, and see these Acts at pp. 247, 253.

2. Opinion of the same respecting compulsory pilotage, and as to the jurisdiction of the Court of Vice-Admiralty over a vessel injured by a collision in the harbour of Halifax, within the body of a county. *The Wavelet*, 356, 357.

3. Opinion of the same that a Court of Vice-Admiralty has jurisdiction under the Imperial Act of 1863 (26 Vict. c. 24, s. 10) in a case of damage done to a wharf by a ship. *The Chase*, 361.

4. Opinion of the same, that the ports of the Dominion of Canada are to be accounted "Home Ports," in relation to each other, and that a bottomry bond given on a Dominion vessel in a Dominion port cannot be enforced by the holder within the jurisdiction of the Admiralty. *The Three Sisters*, 370.

5. Also that "The Admiralty Court Act, 1861," s. 6, confers jurisdiction upon the High Court of Admiralty of England over any claims for damage done to goods, or for breach of contract by the owner, master, or crew of any ship in relation thereto, without conferring it upon the Vice-Admiralty Courts; an advantage in favour of

the English merchant withheld from the colonial, *ib.* 374.

6. Also that many of the Rules of Practice in use in the High Court of Admiralty might very advantageously be extended to the Vice-Admiralty Courts. *Ib.* 349, 350. See also p. 374.

7. And that the fees in the Vice-Admiralty Courts might be largely reduced with signal advantage to the community and the profession, *ib.* 350.

OATHS.

See REGISTRAR ; PERJURY.

OFFENCES.

1. All persons charged in any colony with offences committed on the sea, may be dealt with in the same manner as if the offence had been committed on waters within the local jurisdiction of the Courts of the colony (12 & 13 Vict. c. 96, s. 1. p. 298).

2. Persons convicted of such offences shall suffer the like punishments as on conviction of like offences in England, *ib.* s. 2, p. 299.

3. Provision for the trial of murder and manslaughter when the death only happens in the colony or upon the sea, *ib.* S. 3, p. 299.

4. If any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or harbour, or if any person not being a British subject, charged with having committed

any crime or offence on board any British ship on the high seas is found within the jurisdiction of any Court of justice in Her Majesty's dominions which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits (18 & 19 Vict. c. 91, s. 21).

Nothing contained in that section is to be construed to alter or interfere with the 12 & 13 Vict. c. 96 above-mentioned.

As to offences under "The Foreign Enlistment Act, 1870" (33 & 34 Vict. c. 90, p. 286.)

OFFICE OF PILOT.

Importance and responsibility of the office of pilot, and the necessity which exists that the utmost care and attention should be given by the authorities that make the appointment, to see that none are appointed but those who possess the requisite qualifications and character. *The Lotus—Clark*, 58.

OFFICERS.

See LORD HIGH ADMIRAL ; GOVERNOR ; VICE-ADMIRAL ; JUDGE ; CHIEF JUSTICE ; REGISTRAR ; MARSHAL ; OFFICE OF PILOT.

ONTARIO.

See QUEBEC.

ONUS PROBANDI.

In case of collision is, in the first instance, on the party complaining. *The Margaret—Clark*, 19.

But see COLLISION, 31 ; EVIDENCE, 1 ; OWNERS, 3.

ORDERS IN COUNCIL.

See REGULATIONS ; TABLE OF FEES, 1, 2, 3, 4.

OWNERS.

1. The owner of a ship is not responsible for damage done by his ship, occasioned solely by default of a branch pilot employed by compulsion of law. *The Lotus—Clark*, 58.

See cases of *THE ARABIAN*, 72 ; *THE ALMA*, 72 ; and *THE ANGLO-SAXON*, 117.

2. To entitle the owner of a ship having by compulsion of law a pilot on board to the benefit of the exemption from liability for damage, the fault must be, exclusively, that of the pilot. *The Courier—Wyatt*, 91.

See case of *THE SECRET*, 133.

3. If a licensed pilot is on board a vessel, in order to exempt the owner from liability for damage occasioned by collision, the *onus probandi* lies upon such owner to establish that the collision was occasioned solely by the negligence of the pilot. *The Secret—Davison*, 133.

4. The exemption from liability is not taken away from the owners of the damaging vessel, though the master have the power of selection

from amongst a number of pilots, and though in consequence of such selection the same pilot has in fact piloted the ship for many years. *The Hibernian—Smith*, 148.

5. A person may be considered as the owner of a vessel though his name has never been inserted in the bill of sale or ship's register. *The Anglo-Saxon—Westgarth*, 117.

See PILOT, 2, 3, 5 ; POSSESSION, 1, 2.

PERJURY.

Any person who shall wilfully swear falsely in any proceeding before the Registrar, or other person authorised to administer oaths in any Vice-Admiralty Court, shall be deemed guilty of perjury, and shall be liable to all the penalties attaching to corrupt perjury (26 Vict. c. 24, s. 20, pp. 256, 257).

PILOT.

1. The mode, the time and the place of bringing the vessel to an anchor is within the peculiar province of the pilot who is in charge. *The Lotus—Clark*, 58.

2. Where a pilot is on board the ship he must be actually on deck and in charge to relieve the owners of their responsibility.—*The Courier—Wyatt*, 91.

See case of *THE GORDON*, 198.

3. The pilot in charge of a ship is solely responsible for getting the ship under weigh in improper circumstances. *The Anglo-Saxon—Westgarth*, 117.

4. The duty of the pilot is to attend to the navigation of the ship, and the master and crew to keep a good look-out. *The Secret—Davison*, 133.

5. The owner of a ship not liable in damages for a collision occasioned by the fault of a pilot, where there is a penalty attached to a refusal to take such pilot. *The Hibernian—Smith*, 148.

See COMPULSORY PILOTAGE, 1, 2, 3, 4, 5, 6, 7; CONFLICTING DECISIONS; OFFICE OF PILOT; OWNERS, 1, 2, 3, 4.

PILOTAGE.

Vice-Admiralty Courts have jurisdiction in respect of pilotage (26 Vict. c. 24, s. 10, p. 255).

See COMPULSORY PILOTAGE.

PIRATES AND PIRATICAL VESSELS.

Of the jurisdiction of the Vice-Admiralty Courts as to pirates or piratical vessels (26 Vict. c. 24, s. 12, pp. 255, 256).

As to authority of Admiralty Courts to entertain a suit for the restitution of goods piratically taken on the high seas.

See *THE HERCULES*, 2, DODSON, 369.

POSSESSION.

1. Jurisdiction of the Vice-Admiralty Courts in cases of *possession* to reinstate owners of ships who have been wrongfully displaced from their possession. *The Haidee—Kempthorn*, 25.

2. Jurisdiction of the Vice-Admiralty Courts extended to claims between owners of any ship registered in the possession in which the Court is established touching the *ownership*, possession, employment or earnings of such ship (26 Vict. c. 24, s. 10, p. 255).

(The nature of the jurisdiction in cases of possession antecedent to the passing of this Act—which enlarged it—will be seen from the judgments of Lord *Stowell* upon that subject, collected in “Pritchard’s Digest.”)

PRIVY COUNCIL.

See JUDICIAL COMMITTEE OF PRIVY COUNCIL.

PRESUMPTION.

1. It is the duty of the person in charge of each ship to render to the other ship such assistance as may be practicable and necessary; and in case he fail so to do, and no reasonable excuse for such failure be shown, the collision will be deemed to have been caused by his wrongful act, neglect or default (25 & 26 Vict. c. 63, s. 33). *The Liberty—Ouellet*, 102.

2. When the regulations for preventing collisions under “The Merchant Shipping Acts, 1854, to 1873,” have been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, *ib.* (“Merchant Shipping Act, 1873,” p. 329.)

PROCTORS.

1. As to how far the Court will interfere on a complaint made by the Registrar against proctors for non-payment of his fees, which they have received from their clients and have not paid over to him. *Ex parte Drolet*, 1.

2. A premature action in some cases exposes the proctor, if acquainted with the facts of the case, to the animadversion of the Court for the impropriety of creating unnecessary litigation. *The British Lion—Mann*, 114.

PROOF.

See EVIDENCE; ONUS PROBANDI; VIS MAJOR, 2.

QUEBEC.

Geographical Limits of Ancient Government of, 381. Division thereof into Upper and Lower Canada. Their re-union into the Province of Canada and the division of the latter into the existing provinces of Ontario and Quebec, 381, 2.

RAFTS.

Rules as to the navigating and anchoring of rafts in any navigable river in Canada (*Dominion Act*, 31 Vict. c. 58, s. 2, p. 319).

REGISTRAR.

1. The Registrar of any Vice-Admiralty Court shall have power to administer oaths in relation to any matter depending in the Court (26 Vict. c. 24, s. 20, p. 256).

2. As to the appointment of Registrar and Deputy Registrar, or persons to act during their temporary absence.

See JUDGE, 3, 4, 12, 13; FEES, 2.

REGULATIONS.

1. For preventing collisions at sea, issued in pursuance of "The Merchant Shipping Act Amendment Act, 1862," and of an Order in Council, dated 9th January, 1863, 301.

2. The same rules of navigation, and the same precautions for avoiding collisions and other accidents as are now adopted in the United Kingdom and other countries, were adopted in the Province of Canada by 27 & 28 Vict. c. 13 (30th June, 1864), and extended throughout the Dominion of Canada by 31 Vict. c. 58 (22nd May, 1868), p. 315.

3. And adopted in the United States of America, by an Act passed in the first session of the 38th Congress, chap. 69 (29th April, 1864), p. 308.

4. Regulations made to apply to ships navigating the inland waters of North America, and to ships of the United States navigating such waters when beyond the limits of British jurisdiction (Order in Council, dated 30th November, 1864), p. 312.

5. Order in Council respecting the application of Articles 11 and 13 of the Regulations, as to two ships meeting each other "end on," or nearly "end on," dated 30th July, 1868, p. 325.

REVENUE CASES.

1. Vice-Admiralty Courts in the British possessions have concurrent jurisdiction with the Courts of Record, in the case of forfeitures and penalties incurred by a breach of any Act of the Imperial Parliament relating to the trade and revenues of the British possessions abroad (16 & 17 Vict. c. 107, s. 183).

2. So also in case of penalties and forfeitures, incurred under any Act of the Dominion Parliament, relating to the customs, or trade or navigation, Statute of Canada (31 Vict. c. 6, s. 99).

RIVERS AND NAVIGABLE
WATERS OF CANADA.

See RULES CONCERNING LIGHTS AND FOG SIGNALS; STEERING AND SAILING RULES, 301, *et seq.* 325.

RULES OF PRACTICE.

1. Her Majesty may, by Order in Council, from time to time, establish rules touching the practice to be observed in the Vice-Admiralty Courts, and may repeal and alter the existing and all future rules, and establish new rules in addition thereto, or in lieu thereof (26 Vict. c. 24, s. 14, p. 256).

2. A copy of the rules which may, at any time, be established, to be laid before the House of Commons within three months from the establishment thereof, *ib.* s. 15.

3. To be entered in the records of the Courts, ss. 16 and 17, *ib.*

4. Upon the rules, and also upon the supplementary rules, made in pursuance of the statute 2 Will. IV. c. 51, and established by Her Majesty's Orders in Council, and now in force in the Courts of Vice-Admiralty, see observations of Sir WILLIAM YOUNG, Chief Justice of Nova Scotia, sitting as Judge of the Admiralty at Halifax, in the cases of *THE CITY OF PETERSBURG*, 348, 349, and of *THE THREE SISTERS*, 374.

See *NOVA SCOTIA*, 6.

RULE OF THE SEA.

1. The law imposes on a vessel having the wind free, the obligation of taking proper measures to get out of the way of a vessel close hauled. *The Anne Johanne—Larsen*, 43.

See case of *THE COURIER*, 91.

2. When two vessels are approaching each other on opposite tacks, each being close hauled, the vessel on the starboard tack should keep on her course, and the vessel on the port tack should keep off. *The Liberty—Ouellet*, 102.

The only exception to the rule is, that if the vessel on the port tack is so much to windward, that in case both persist, the vessel on the starboard tack will strike her to leeward and abaft the beam, then the vessel on the starboard tack must give way, as she can do it more easily than the other.—*Dana's Seaman's Friend*, p. 59, of London Edition of 1864.

The same rules of navigation, and the same precautions for avoiding

collisions and other accidents, as are adopted in the United Kingdom and other countries, are also adopted in respect of vessels navigating Canadian waters, by 31 Vict. c. 58, p. 315.

SALVAGE.

1. *The Palmyra*, sunk in the river St. Lawrence, was raised and saved by the very ingenious, novel, and excellent machinery on board of *The Dirigo*, and the great skill and experience of the master and crew, most of whom were picked men, and excellent mechanics. The Court directed that £1000 sterling was a reasonable salvage. *The Palmyra*—*Lovitt*, 4.

2. Upon a valuation of £6700, the sum of £400, awarded as salvage to a schooner, for towing a vessel disabled in her masts and rigging in the lower part of the St. Lawrence, to a place of safety, the mere *quantum* of service not being the criterion for a salvage remuneration. *The Royal Middy*—*Davison*, 82.

3. It seems to be the general sense of the maritime world that the rate of salvage in cases of derelict should not, in ordinary cases, range below one-third, nor above a moiety of the property. *The Marie Victoria*—*Ellis*, 109.

4. In a case of very meritorious service rendered by five seafaring persons to a vessel which was discovered by them in the river St. Lawrence, deserted by the crew, the Court awarded one moiety of the

property saved, and also their costs and expenses, *ib.*

5. Where the master and crew of a vessel were taken off by salvors in canoes, the former abandoning her under the apprehension that she would be a total wreck, but was afterwards saved by the meritorious exertions of the latter, a moiety of net value of ship and cargo was allowed as salvage. *The Pride of England*—*Bean*, 189.

6. While a vessel floating amidst the ice of the St. Lawrence, without any person on board, and without a rudder, her master and crew having left her, but intending to return, four persons went out to her in canoes, and by aid of her sails, grounded her in a place of safety. £200 sterling allowed as salvage. *The Pomona*—*Bruce*, 182.

7. The Vice-Admiralty Courts have jurisdiction in respect of salvage of any ship, or of life, or goods therefrom (26 Vlot. c. 24, s. 10), p. 255.

8. Derelict being *sine spe recuperandi*, is distinguished from salvage in the amount awarded. *The Marie Victoria*—*Ellis*, 109.

9. Rules as to salvage prevailing in the High Court of Admiralty, obtain also in the Courts of Vice-Admiralty, *ib.*

10. Where the master of a steamer exacted an exorbitant contract for salvage service from the master of a sailing vessel which, with the mate alone on board, was in imminent danger of shipwreck,

the same was set aside, and a *quantum meruit* allowed. *The America—Harries*, 214.

SEAMEN.

1. Compensation to, allowed for unnecessary detention on charge of desertion ("Merchant Shipping Act, 1873," s. 9) p. 328.

2. Whenever it is made to appear to Her Majesty that the government of any foreign state is desirous that any of the provisions of the Merchant Shipping Acts, 1854 to 1873, relating to the engagement and discharge of seamen, shall apply to the ships of such state, Her Majesty may, by Order in Council, declare that such of the said provisions as are in such order specified, shall apply to the ships of such state as in the case of British ships, *ib.* s. 11.

SEAMEN'S WAGES.

See *DESERTION* ; *MARINER'S CONTRACT* ; *WAGES*.

SEIZURES.

See *COURTS*, *VICE-ADMIRALTY*, 4, 7.

SHIP.

See *INTERPRETATION OF TERMS*.

SHIPWRECKS.

See *ACTS OF PARLIAMENT*, 9.

SPECIAL CONTRACT.

See *JURISDICTION*, 11, 12, 15 ; *NOVA SCOTIA* ; *TOWAGE*, 2 ; *WAGES*, 2.

STATUTES (IMPERIAL).

- 3 & 4 Vict. c. 65.
- 3 & 4 Vict. c. 66.
- 6 & 7 Vict. c. 85.
- 12 Vict. c. 44.
- 12 & 13 Vict. c. 96.
- 16 & 17 Vict. c. 107.
- 16 & 17 Vict. c. 78.
- 24 Vict. c. 10.
- 25 & 26 Vict. c. 63, s. 29.
- 26 Vict. c. 24.
- 30 & 31 Vict. c. 45.
- 30 & 31 Vict. c. 114.
- 33 & 34 Vict. c. 90.
- 37 Vict. c. 85.

STATUTES (CANADIAN).

- 27 & 28 Vict. c. 14.
- 31 Vict. c. 58.

STEAM TUG.

See *TUG AND TOW*.

STEAM VESSELS.

- 1. *THE MARTHA SOPHIA*.
- 2. *THE ARABIAN*.
- 3. *THE JAMES MCKENZIE*.
- 4. *THE ANGLO SAXON*.
- 5. *THE SECRET*.
- 6. *THE HIBERNIAN*.
- 7. *THE GERMANY*.
- 8. *THE THAMES*.

STEERING AND SAILING RULES.

See *REGULATIONS*.

TABLE OF FEES.

- 1. Her Majesty may, by Order in Council, from time to time, establish Tables of Fees to be taken by the

officers and practitioners of the Admiralty Courts, for all acts to be done therein, and may repeal and alter the existing and all future tables of fees, and establish new tables of fees in addition thereto, or in lieu thereof (26 Vict. c. 24, s. 14), p. 256.

2. A copy of the tables of fees to be laid before the House of Commons within three months from the establishment thereof, *ib.* s. 15.

3. To be entered in records of the Court, *ib.* ss. 16 and 17.

4. The fees established for any Vice-Admiralty Court shall, after the date fixed for them to come into operation, be the only fees which shall be taken by the officers and practitioners of the Court, *ib.* s. 18.

5. Any person who shall feel himself aggrieved by the charges of any of the practitioners, or by the taxation thereof by the officers of the Court, may apply to the High Court of Admiralty of England to have the charges taxed, or the taxation thereof revised, *ib.* s. 19.

See FEES, NOVA SCOTIA, 7; PROCURORS, 1, 2.

TENDER.

Where a tender is refused simply on account of more being alleged to be due, it is not necessary that the amount tendered should be tendered in coin. *The British Lion—Mann*, 114.

TITLE.

Vice-Admiralty Courts have juris-

diction touching the ownership of any ship registered in the possession in which the Court is established (26 Vict. c. 24, s. 10), p. 255.

Before the passing of this Act the Vice-Admiralty Courts had no jurisdiction to entertain a suit for possession, for the purpose of *trying the title* to a ship. They had no more than the ordinary jurisdiction possessed by the High Court of Admiralty antecedent to the passing of 3 & 4 Vict. c. 65, which enlarged it.

See the Judgment of the Lords of the Judicial Committee of the Privy Council in the case of *The Australia*, on appeal from the Vice-Admiralty Court at Hong-Kong, 19th July, 1859, 13 Moore's P. C. C. 132.

TOWAGE.

1. Jurisdiction as to claims in respect of towage extended by the Vice-Admiralty Court Act of 1863 (26 Vict. c. 24, s. 10)), p. 255.

2. Under this Act the Court can enforce the payment of reasonable towage, but has no authority to enforce an agreement to employ a particular tug either for a definite or an indefinite quantity of work. *The British Lion—Mann*, 114.

TRADE AND NAVIGATION LAWS.

As to seizures for breach of the Trade and Navigation Laws:—

See CUSTOMS; REVENUE CASES; VICE-ADMIRALTY COURTS, 4, 5, 6.

TRINITY HOUSE.

See COLLISION. 1; Vis MAJOR, 2.

TUG AND TOW.

1. Steam tugs employed in an ordinary service of towing merchant vessels are bound to be subservient to the orders of the pilot on board the vessel in tow. *The Anglo-Saxon* — *Westgarth* 122, note (a).

Master of the tug must implicitly obey and carry out the orders of such pilot, excepting in the case of gross mismanagement on the part of the pilot, *ib.*

UNITED STATES OF AMERICA.

Regulations for preventing collisions apply to ships belonging to the United States of America when navigating the inland waters of North America, whether within British Jurisdiction or not. Order in Council, dated 30th Nov. 1864, p. 313.

VICE-ADMIRAL.

See GOVERNOR.

VICE-ADMIRALTY COURTS.

1. Her Majesty, by Commission under the Great Seal, may empower the Admiralty to establish one or more Vice-Admiralty Courts in any British possession, notwithstanding that such possession may have previously acquired independent legislative powers (30 & 31 Vict. c. 45, s. 16), p. 261.

2. The jurisdiction and authority

of all the existing Vice-Admiralty Courts are declared to be confirmed to all intents and purposes, notwithstanding that the possession in which any such Court has been established may, at the time of its establishment have been in possession of legislative power, *ib.*

3. Vice-Admiralty Courts have jurisdiction in all cases of breach of regulations and instructions relating to Her Majesty's navy at sea, and in all matters arising out of droits of Admiralty (26 Vict. c. 24, s. 10), p. 255.

4. The jurisdiction in respect of seizures for breach of the revenue, customs, trade, or navigation laws, or of the laws relating to the abolition of the slave trade, or to the capture and destruction of pirates and piratical vessels, is not taken away or restricted by "The Vice-Admiralty Act, 1863" (26 Vict. c. 24, s. 12), pp. 255, 6.

5. Nor, any other jurisdiction, at the time of the passing of that Act, lawfully exercised by any such Court, *ib.*

6. The jurisdiction of the Vice-Admiralty Courts, except where it is expressly confined by that Act to the matters arising within the possession in which the Court is established, may be exercised, whether the cause or right of action has arisen within or beyond the limits of such possession, *ib.* 256.

7. Vice-Admiralty Courts have jurisdiction in respect of seizures of ships and vessels, fitted out or

equipped in Her Majesty's dominions, for warlike purposes, without Her Majesty's licence, in contravention of "The Foreign Enlistment Act" (33 & 34 Vict. c. 90, ss. 19 and 30), pp. 291, 296.

See JURISDICTION, 10.

VIS MAJOR.

1. Where, by moving of the ice-bridge in the harbour of Quebec, a steamer was brought under the bow of a sailing vessel, her walking beam broken and her machinery injured: *Held*, that the damage was not owing to the contravention of a by-law of the Trinity House, but was caused entirely by a *vis major*, and was the result of inevitable accident. *The Harold Haarfagar—Helliessen*, 208.

2. The Court will not *ex officio* notice a by-law of the Trinity House at Quebec, but will require legal evidence of its contents and publication, *ib.*

VOYAGE.

"The Merchant Shipping Act, 1873," permits of any agreement with a seaman under the section 149 of "The Merchant Shipping Act, 1854," stating the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage is not to extend instead of stating the nature and duration of the intended voyage or engagement, as by that section required, 328.

WAGES.

1. Under the 190th section of "The Merchant Shipping Act, 1854," no seaman engaged for a voyage or engagement to terminate in the United Kingdom, can sue in any Court abroad for wages, unless he is discharged with such sanction as is required by the Act. *The Haidee—Kempthorn*, 25.

2. Vice-Admiralty Courts have no jurisdiction over a contract for wages different from the ordinary mariner's contract. *The City of Petersburg*, 343.

See JURISDICTION, 12, 15.

WAR.

See FOREIGN ENLISTMENT ACT; FORFEITURES; JURISDICTION, 10, 15; VICE-ADMIRALTY COURTS, 3, 7.

WITNESS.

The evidence of interested persons admissible, leaving the question of credibility to the discretion of the tribunal before which the evidence is given. *The Courier—Wyatt*, 91.

WRITS OF ASSISTANCE.

How obtained, and the powers of those acting under them (31 Vict. c. 6, s. 92). *Dominion Parliament*.

YOUNG, THE HON. SIR WILLIAM.
(CHIEF JUSTICE.)

See NOVA SCOTIA.



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